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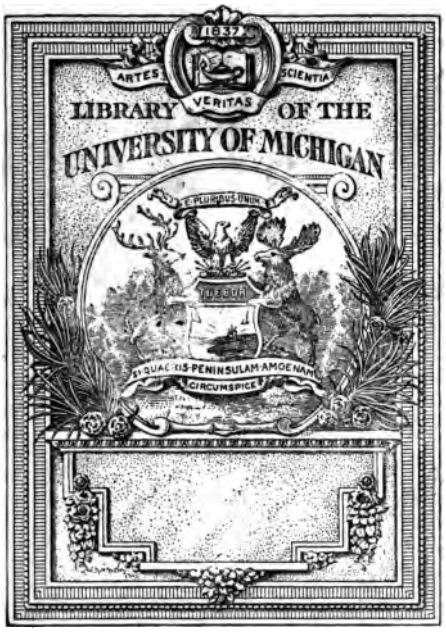
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State Regulation of Labour and Labour Disputes in New Zealand.

A DESCRIPTION AND A CRITICISM.

BY

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PREFACE.

Among the countries that have attempted, during recent years, to solve the Labour Problem by means of Legislation and State Regulation, New Zealand has occupied a conspicuous place. The operation of our Industrial Conciliation and Arbitration Act has been keenly watched by many throughout the civilised world, who recognise that New Zealand is conducting a bold experiment in regulating the conditions of labour by law. Many visitors, most of them representatives of Governments, have come to our shores for the purpose of enquiring into our Arbitration system, and into the truth of the widespread reports that it has been an unqualified success, and has been the chief factor in producing a period of unprecedented prosperity within the Dominion.

Indeed, nearly all the books and reports which have hitherto dealt with the Arbitration Act, have been written by men who live outside New Zealand. Admirable as many of these publications are from some points of view, they hardly touch more than the surface of the subject. My experience leads me to the conclusion that, in order to be able to study thoroughly the working of the New Zealand Act, one must reside in the country for at least a few years, and be continually in touch with the system. Having occupied the position of Secretary to the Canterbury Employers' Association for more than seven years, and having been a member of the Canterbury Conciliation Board for nearly three years, I have had exceptional opportunities of closely observing the manner and effects of the regulation of labour by the State. This, I think, will be obvious when I state that the Secretary to an Employers' Association in New Zealand must be conversant with the provisions of the Arbitration Act, and with many of the awards of the Court, while his more responsible work includes the assisting of employers in preparing cases for the Court, in attending conferences between employers and workers, and in representing employers before the Court. The Secretary is also constantly consulted as to the interpretation of awards, and thus becomes acquainted with the troublesome points which not infrequently confront employers in their endeavours to adhere to the terms of the awards.

The aim of the present work is to give, in the smallest compass, a comprehensive and unprejudiced view of the working of compulsory arbitration in New Zealand. By way of introduction a brief account is given of the two important labour events—the Sweating Commission and the Maritime Strike—which heralded the advent of the Hon. Mr. Reeves' Conciliation and Arbitration Bill. The passing of the Bill having been dealt with, the main provisions of the Compilation Act of 1905, and those of the Amending Act of the same year, are summarised, with explanatory comments wherever these have been thought necessary. The succeeding chapters describe the operation of the Act and its effects on industry and commerce, and contain numerous decisions bearing upon the points discussed.

Great care has been exercised in the preparation of the work, which was begun nearly two years ago. Since then a number of important decisions have been given, and these have had to be incorporated in the various chapters from time to time. Only a few months ago the Industrial Conciliation and Arbitration Act Amendment Bill, by which drastic alterations in the Act are proposed, was introduced into Parliament by the Minister for Labour, and a summary of this measure has been given as an Appendix. The work is, therefore, in every respect quite up-to-date.

Regarding the opinions I have ventured to express throughout the book, I wish it to be clearly understood that they are my private opinions, and that they must not be taken as representing those of the body with which I am officially connected. Whether they agree or disagree with these opinions, all interested in labour questions will, I hope, find the book useful as a work of reference for years to come.

H. B.

CHRISTCHURCH, N.Z.,
7th December, 1907.

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CHAPTER I.

HISTORICAL INTRODUCTION.

The labour conditions, as they existed in New Zealand for some years prior to 1892, have been frequently referred to as having led to the introduction of the Hon. Mr. Reeves' measure in that year. Only recently an American writer states that that measure "was the outcome of a study of the problems brought forcibly to view by the great maritime strike of 1890, which devastated New Zealand as well as the Australian Colonies."

It was, of course, after the maritime strike had terminated that the labour party agitated for legislation which would, it hoped, enable it to secure conditions it had failed to obtain through the strike, but it need not be inferred from this that the industrial conditions of the Colony generally were at any time such as to call imperatively for the special legislation asked for.

It is proposed in this chapter to give a short account of the two chief labour events of the year 1890, namely, the Sweating Commission and the Maritime Strike, and this, it is hoped, will enable the reader to form a fairly accurate opinion of the actual condition of things as it prevailed in that year.

(i.)—Sweating Commission.

It having been alleged that sweating to some extent prevailed in the Colony, a Commission was appointed "to enquire into the mode and terms in and on which persons are engaged or employed in shops, in wholesale and retail trading and manufacturing business establishments, and in hotels and other licensed houses of public resort—and in particular as to the mode and terms in and on which persons are engaged or

employed in any manner in supplying or making goods or articles for the owners or occupiers of such shops or wholesale or retail trading or manufacturing places of business or otherwise, and upon the relations generally of employer and employed, and the best machinery for determining matters and questions arising between them and relating to their respective interests." The Commission held sittings at the four chief centres, and in May, 1890, issued its report, from which the following are extracts:—

"With satisfaction we report that the system known in London and elsewhere as 'sweating,' and which seemed at one time likely to obtain a footing in some of our cities, does not exist. It is true there are complaints in many cases of long hours and of reduced rates of pay, but these seem almost inevitable wherever competition is keen, unless checked by a healthy public opinion."

"That the employment of those young persons to the exclusion of skilled and trained workers is the chief grievance among artisans in the various trades. Where trades unions have been formed, the proportion of lads to men has been strictly defined, in some cases with the avowed intention of keeping up the supply of skilled workers, but in the majority of cases only with a view to self-preservation, and without regard to the larger question of finding employment for the hundreds of youths growing up in our midst."

Of the nine commissioners, three disagreed with the finding of the Commission with regard to the existence of "sweating." Their opinion was that sweating existed, "although only to a very limited extent."

The Commission recommended, among other things, that the Factories Act should be amended in the direction of conferring larger powers on the inspectors, providing for sanitary workrooms, and limiting the employment of children. It also recommended that regulations should be made for providing for seats for saleswomen, that a bureau of labour statistics be established, and that steps should be taken to establish boards of conciliation and arbitration "based upon an equitable representation of labour and capital."

As a reflection of labour opinion at the time concerning the powers of the suggested Arbitration Court, it may be worth while to quote from the evidence given before the Commission by Mr. R. Slater and Captain Millar. The former is the present representative of the workers on the Arbitration Court, while

the latter has been one of the leading representatives of labour in the House of Representatives for some years, and is now Minister for Labour.

Mr. Slater: I would not approve of Boards of Arbitration that would take the power of striking out of the hands of the Union.

After giving his opinion as to the constitution of a Court of Arbitration for the settlement of disputes, Captain Millar said:—

I do not mean that the decision of the Court should be binding for all time, but for six or twleve months.

(ii.)—The Maritime Strike.

The Maritime Strike had its origin in Australia, and broke out in New Zealand purely out of the local workers' sympathy with the Australians. As early as ten years before the strike took place, the aggressiveness of the Maritime Labour Council in Australia was keenly felt. When any employer did not bow to the dictation of the Council, he was boycotted, and had to go under. It was not until 1890 that employers combined to protect themselves, stern necessity compelling them to do so. The following will serve as an example of the coercive demands made at this time by the Council:—At Adelaide, it was required that any men not members of a Union, or of the Working Men's Association, or of the Seamen's Union, should not be allowed to handle any goods that were to be shipped in ketches or steamers trading out of the port, and that draymen should not be allowed to handle any goods touched by storemen or others in warehouses not members of the Union. The employers refusing to give way, the strike followed. The former, however, made a very determined fight, which resulted in the unconditional surrender of the Council.

The general maritime strike, in which all the Australian States were involved, afterwards followed, the leading facts of the dispute being as follows:—The Seamen's Union demanded an advance in wages, which the shipowners declined to grant on the ground that they could not afford it. Public sympathy was not with the Union, and it therefore hesitated whether it should withdraw its demands or strike. Just at this time the steamship officers came to the Union's assistance in an unexpected manner. The officers asked for an increase of pay, but before doing so had, with the view of strengthening their position, become affiliated with the Trades Hall in Melbourne. The shipowners expressed their readiness substantially to grant the increase demanded on condition that the officers withdrew

from the Trades Hall. They contended that the shipowners had to rely for the protection of their interests upon the officers, and that being so, the existence of the necessary confidential relations between them and the officers would be impossible if, at any moment, the officers and all labour employed in the shipping trade, were liable to take combined action against them. The officers refused to break off their relations with the Trades and Labour Unions, and the great strike then began. The Seamen's Union, which was apparently unwilling to strike on its own account, quickly took advantage of the difficulty with the officers, and threw in its lot with the latter.

Shortly afterwards the strike spread to New Zealand. The Seamen's Union called out the men on board the Union Steamship Company's steamers, the reason given for the interference with the Union Company being that it belonged to the Shipowners' Association, which had been formed in Australia as a result of the maritime trouble. A further reason given for the action of the Seamen's Union was that the Union Company had begun to man the steamers in Dunedin with free or non-union labour. A manifesto issued by the Union Company from Dunedin in August, 1890, sums up the situation from its point of view:—

"The directors of the Union Steamship Co. of New Zealand have arrived at the conclusion, with much regret, that the present policy of the labour unions of all Australasia, which has led to the imminent paralysis of trade in all the Colonies, and which has kept up constant irritation and unbearable uncertainty in all departments of trade for some months past, is the outcome of a general determination on their part to try their strength with all employers of labour. There has been no dispute of any serious character in New Zealand, and the disputes in Australia cannot be considered to bear any relation to the measures adopted by the unions. The directors have therefore no alternative left but to fall in with the resolutions of the Steamship Owners' Association and other employers of labour, and to support them to the utmost of their power in opposing the encroachments of labour unions by every possible means until it is found that negotiations can be re-opened and some prospect of such a settlement as will enable them to conduct business with some degree of comfort and confidence. They have no hesitation in declaring that the wages paid by them for many years are such as they have a right to regard with satisfaction, and therefore unhesitatingly throw the whole responsibility of

the very serious disorganisation which is about to ensue upon the shoulders of the leaders of the unions."

To this there was a prompt and lengthy reply from the Maritime Council. It denied that the labour unions had been anxious to have a trial of strength, but that "the Steamship Owners' Association, seeing that the various unions throughout Australasia were becoming, in their opinion, too powerful, decided to endeavour to crush them out with the object of effecting a rupture." It considered that "it was arbitrary and unjust" on the part of the shipowners to seek to prevent the officers from affiliating with the Council, while the shipowners themselves exercised the right to band together. It alleged that efforts had repeatedly been made by the officers and seamen to have their demands considered, but that they had proved fruitless "owing to the offhand and contemptuous action of the Shipowners' Association." The Council admits that it had no direct quarrel with the Union Company, "but the Union Company being portion of an Association which has openly expressed its intention of crushing labour unions, cannot expect to be allowed to run through."

A daily newspaper, commenting on the reasons given by the Maritime Council for attacking the Union Company, remarked that "the whole Colony of New Zealand is to be put to all this turmoil and distress on account of a private quarrel between the shipowners and the other Colonies and their men, with which the New Zealand labour market has nothing to do." The same paper also pointed out that the men of the Union Company had not asked for the wages the Australian shipowners had refused to concede to their men. As a matter of fact, nothing but a feeling of loyalty to the strikers in Australia made the seamen and a certain number of the officers in the Union Company's service quit their posts when requested by the Maritime Council. Many, indeed, expressed regret at striking.

To effect a complete paralysis of trade between the various ports, it was necessary that there should be no wharf labourers to load the vessels, and acordingly the Maritime Council called these workers out. Soon afterwards it was feared that the railway hands would cease work. At one centre at least, they met and passed a resolution expressing sympathy with the strikers, and declaring their readiness to come out whenever required. The Railway Commissioners showed their disapproval of this action by dismissing four servants, and no further step

was taken by the men. It was evident from the commencement of the strike that the general public had no sympathy with it. A general stoppage of trade in all quarters was hardly likely to find favour with the people, no matter what grievances the Australian officers and seamen had against their employers. It was not merely the business community which suffered. The price of coal alone advanced fully 100 per cent., and the general condition of things was, of course, felt worse by the working people. There can be no doubt, however, that a number of the unionist artisans in the Colony sympathised with the strikers. There were fears, indeed, that all trades would be called out, and thus "try their strength with all employers of labour."

It was because of a threatened general rising of Labour against Capital that employers' associations were formed in the chief centres. Their object was to take combined action in combating the demands of labour unions, and otherwise to protect their interests. A somewhat novel association was formed at Napier. It was styled "The Free Association of Employers and Workmen of Hawke's Bay." At the public meeting at which this organisation was started, reference was made by the speakers to the strike leaders and their responsibility for the labour agitation then going on. The Chairman said:

> A large part of the community were being led by a certain number of agitators into a line of action which five men out of six did not at all agree with. . . . Yet they had been firmly impressed with the idea that they must join the unions, not because they knew why or had any grievances, but because they were told so.

Another speaker said:

> If they knew what the Maritime Council had to complain of, they would be able to see whether there was any grievance to redress. But all the men said they were very sorry to strike, but had to do so because they were told to do so by the Council.

In an article explaining the objects of the combination of employers and workmen, the "Hawke's Bay Herald," of September 5th, 1890, says:

> The Association is not directed against unionism in its legitimate exercise of power—but it is distinctly directed against the surrender of individual liberty to an irresponsible central power like the Maritime Council at Dunedin. In short, it aims at two things—first, the thoroughly efficient protection of free labour against the attacks of illegitimate unionism; and second, at bringing unionism back into its old and legitimate channels in which it was a power for good instead of for widespread mischief.

Fortunately for the workers as well as for the employers, the persistent efforts of the labour leaders to bring about a

general labour war in the Colony were unsuccessful. There was, for a short time, trouble with the workers in one small industry which attracted a good deal of attention owing to the excitement prevalent at the time, but the other trades appeared to have no real grievance. The struggle between the Union Company and the Maritime Council was itself serious enough, until the Company succeeded in filling the gaps left by the strikers. As has already been stated, the general public had no sympathy with the strike, and when the wharf labourers came out, there was, as we learn from one newspaper, quite a rush on the part of men to help to load cargoes. Farmers and employers of labour furnished assistance, and the Railway Commissioners sent permanent railway hands to work at the docks. Some feeling was, of course, manifested by the strikers against the "blacklegs," but the precautionary measures taken by the authorities prevented any serious disturbance.

The strike, which lasted barely three months, ended in a victory for the employers. The labour unions involved naturally felt sore over the employment of free or non-union labour, but in their terms of capitulation, they were understood to agree to the following:—(1) That employers retain the men engaged during the strike; (2) that the unions admit the right of employers to employ either free or union labour; (3) that the unions agree to work with free labour.

In Australia, the labour unions were obliged to agree to similar terms. In the Annual Report of the New South Wales Employers' Union for 1891, we find the following references to the strike:—

> On the 7th of November last [1890], the 'Labour Defence Committee,' finding that they were defeated, and being unable to carry on any longer declared the strike 'off,' and the intention of the body which had been published throughout the country, to 'reconstruct society,' was for the time abandoned. . . . The employers having, in self-defence, and with a view of carrying on the business of the country, filled the places left vacant by the strikers it became impossible that the free labourers should be sacrificed to find places for those who had deserted their posts. A heavy indictment lies against the leaders who arrogantly dragged the men into an utterly unprovoked industrial war, which ended in a disastrous rout.

It must be admitted that the strike, viewed merely from the financial standpoint, was a most deplorable one. The loss in wages alone must have been enormous; in one Australian Colony it was estimated to exceed half-a-million pounds sterling.

CHAPTER II.

ENACTMENT OF THE INDUSTRIAL CONCILIATION AND ARBITRATION ACT.

About a month after the termination of the strike, the triennial general election took place, and resulted in a decided victory for the Liberal Party. This put great heart into the Labour Party, as its prospects of being able to accomplish its ends were now brighter than ever before. It lost little time in urging Parliament to pass labour legislation in harmony with its views, and eventually, in 1892, the "Industrial Conciliation and Arbitration Bill" was introduced by the Hon. W. P. Reeves. A few extracts from Mr. Reeves' speech when moving the second reading of the Bill are worth giving:—

"I am not blind to the fact that the Bill is more or less of a novel character in New Zealand. There is nothing at all like it on the Statute Book, and it is a measure which may be distinctly called of *an experimental kind.* In the first place, I may say, that the Bill was one of a character somewhat troublesome to draw. There are not in the British Empire any large number of statutes in force for the reference of industrial disputes to councils of conciliation or courts of arbitration."

Mr. Reeves went on to say that the Massachusetts Council was almost an ideal tribunal, its one fault being that it had not sufficient power; it was entirely voluntary. He admitted, however, that great, good work, had been effected by that Council.

"If," he said, "I thought that the opinion of the people of the Colony or of this House would favour a tribunal somewhat of that character, and somewhat also like the tribunal that exists in Germany, I should not have brought in anything like the more elaborate provisions that I propose in this Bill. . . . I cannot help thinking, after devoting many hours to the study of this subject, that the ideal Board is one consisting of *three persons* appointed by the State, paid an annual salary, and able to go to any part of New Zealand *where a dispute arises,*—a Board which should have the power to transform itself into a judicial tribunal able to compel parties to come before it, and to make its decisions legally binding. But I do not think that public opinion is ripe for that yet. . . . *I do not think*

that it is desirable to send cases to the Court of Arbitration if they can possibly be settled in a voluntary and peaceful way by the local Boards of Conciliation. The Court of Arbitration is the last resort when every other means has failed.

Mr. Reeves referred to the fact that the problem of settling industrial disputes had engaged the attention of some of the acutest men, and the most experienced minds of many nations, and no final solution of it had yet been come to. He spoke of the great evils of labour wars in larger countries, but said nothing suggesting that New Zealand was a country given to strikes. He knew, of course, that the strikes which had taken place in the Colony—with the exception of the Maritime Strike—had been on a small scale, and that, moreover, they had not been of frequent occurrence. He was undoubtedly anxious to prevent strikes of any kind, and to do this by a measure which, to use his own words, was "absolutely experimental, and in New Zealand, absolutely novel."

"I think," he said, "that the time is opportune for the experiment, for undoubtedly public opinion is growing up, even among those who might have at one time thought that they had most to gain by strikes, that strikes are at best injurious to all parties, and that conciliation is what must be looked to."

While the Bill was before Parliament, from 1892 to 1894, its compulsory provisions were opposed throughout by the employers of the Colony. The following copy of resolution, forwarded to the Minister for Labour by an employers' association, in 1893, expressed the views of most of the New Zealand employers in regard to the measure:—

> That while agreeing to the principle of settling industrial disputes by means of voluntary Boards of Conciliation and Arbitration, this Association is strongly opposed to compulsory State Arbitration, and is of opinion that unless the initial proceedings in such matters are voluntary, the present Bill, if it becomes law, will prove prejudicial to the trade of the Colony, also to the best interests of both employers and wage-earners, and to the generally satisfactory relations subsisting between them; but when once an industrial agreement is come to by means of voluntary conciliation or arbitration the law should enforce its observance.

The trades unions gave the Bill, as it stood, their steady support.

Notwithstanding the opposition to the compulsory clauses by the employers, and the deletion of them twice by the Legislative Council, Mr. Reeves insisted on their retention, as he considered that they formed an integral part of the measure. When moving the second reading in 1894, he said:—

"I do not think the Arbitration Court will be very often called into requisition; on the contrary, I think that in 99 cases in 100 in which labour disputes arise, they will be settled by the Conciliation Boards; but unless you have in the background an Arbitration Court, the Conciliation Boards will not be respected, and they will be virtually useless."

To what extent Mr. Reeves' expectation, that practically the whole of the disputes that would arise would be settled by conciliation, has been realised, will be shown in a subsequent chapter.

The Bill became law on the 31st August, 1894, and the interest it aroused at the time was astonishingly little. Its author had succeeded in persuading Parliament to pass it as an experiment, and if it proved a failure, it could be repealed. But Mr. Reeves perhaps did not then realise that it is usually easier to pass a law than it is to get one repealed.

Numerous amendments to the original law have been made, and every year the Trades and Labour Councils call upon the Government to amend it still further. It is not my intention to explain the 1894 Act, and each subsequent amendment in detail. I purpose rather describing the principal features of the law as embodied in the "Industrial Conciliation and Arbitration Acts Compilation Act, 1905," and the amending Act of the same year, pointing out some of the more important alterations made since the original Act came into force.

CHAPTER III.

THE INDUSTRIAL CONCILIATION AND ARBITRATION ACTS COMPILATION ACT, 1905.

(i.)—TITLE.

The title of the 1894 Act read: "An Act to encourage the formation of industrial unions and associations, and to facilitate the settlement of Industrial Disputes by Conciliation and Arbitration." By the amendment Act of 1898, the words, "to encourage the formation of industrial unions and associations," were left out.

(ii.)—INTERPRETATION.

Included in the interpretation Clauses are the following:—

"Industrial Matters" embrace—

(*d*) "The claim of members of an industrial union of employers to preference of service from unemployed members of an industrial union of workers," and

(*e*.) "The claim of members of industrial unions of workers to be employed in preference to non-members."

It was not until 1900 that these provisions were introduced. A decision of the Appeal Court upholding the right of the Arbitration Court to grant preference to unionist workers had been given prior to the passing of the 1900 Act.

"Industry" is defined as meaning "any business, trade, manufacture, undertaking, calling, or employment in which workers are employed," and

"Worker" as "any person of any age of either sex employed by any employer to do any skilled or unskilled manual or clerical work for hire or reward."

In the original Act there was no definition of "worker", and "industry" was defined as any "business, trade, manufacture, undertaking, calling, or employment of an industrial character." By a decision of Mr. Justice Edwards in 1899 on the application of the Christchurch Grocers' Assistants to the Arbitration Court for an award, it was made clear that the Act, as it then stood, could not be applied to the retail trades, as they were not of "an industrial character." In the consolidating Act of 1900 the words "of an industrial character" were struck out, and the words "in which workers are employed," were substituted. A new sub-clause, however, was introduced defining a "worker." It read: "'Worker' means any person of any age of either sex employed by any employer to do any skilled or unskilled

manual or clerical work for hire or reward in any industry." These amendments were evidently intended to bring all the retail trades, and in fact, every kind of employment, within the meaning of the Act, and there would have been no doubt as to the scope of their application had the words "in any industry" in the definition of "worker" been left out. It was considered by the Christchurch Master Hairdressers that these words prevented their trade coming under the Act, and the matter was not placed beyond doubt until they were struck out by the Amending Act of 1901.

The following extended definition of "employer" and "worker" was included in the amending Act of 1904:—

"In order to remove any doubt as to the application of the foregoing definitions of the terms 'employer,' 'industry,' and 'worker,' it is hereby declared that for all the purposes of this Act an employer shall be deemed to be engaged in an industry when he employs workers who, by reason of being so employed, are themselves engaged in that industry, whether he employs them in the course of his trade or business or not."

This clause, it is understood, was inserted chiefly at the instance of some builders in consequence of a decision of the Arbitration Court in a case in which an Auckland draper, when building a house for himself, employed certain men at less than the minimum wage fixed by the Builders and Contractors' Labourers' Award. It was sought to bind the draper by the award ruling in the district, but the Court held that a person in the respondent's position was not engaged in the industry to which the award related.

In a decision given in December, 1906 (Book of Awards, volume 7, page 709) the Court of Arbitration held that the definition of "worker" in clause 2 of the Act did not include shipmasters. A number of New Zealand shipmasters had formed an "Association of Workers", which was registered under the Act. The Association applied to the Arbitration Court for an Award, the Wellington Harbour Board being the respondent. The demands of the Association were briefly thus: Salaries.—Harbourmasters, £500 per annum, this amount to be increased to £600 by yearly increases of £25 per annum; chief pilot or deputy harbourmaster, £350 per annum; pilots £300 per annum; tug or dredge masters, £240 per annum. Uniforms and holidays were also asked for. The Harbour Board argued that for reasons to be found in the Arbitration Act and the Harbours Act of 1878, the Court had no jurisdiction to make an award. The Court, in its judgment, quoted the definitions of "industry" and "worker" in clause 2, and said that unless "the persons in respect of whom the union makes the claim are workers within this definition, there is no jurisdiction to make an award." The Court did not think that a shipmaster was "really primarily employed to do either manual or clerical work, but to command and navigate ships, and that the duties of harbourmasters, whether on vessels or on the wharves, the duties of pilots, and the duties of tug or dredge masters are substantially of the same nature. So dominant are the factors 'skill' and 'command' that the merely incidental manual or clerical work goes out of sight, as it does in many other highly skilled occupations, such as those of schoolmasters, factory managers, &c." It was further held by the Court that to make an award would be to assume that the Legislature intended in part to repeal the Harbour Act, section 49 of which empowered the Harbour

Board to appoint or remove its own officers, and to fix what salaries were to be paid to such officials. If the salaries were unpaid they were not to be sued for as upon a contract of service, "but the Supreme Court may be applied to to command payment out of the Harbour Fund."

(iii.)—Administration.

The general administration of the Act is in the hands of the Minister for Labour; the Secretary for Labour (who also acts as Registrar), and the Deputy-Registrar, being the Minister's chief subordinates.

A Labour Department was established in 1891, and it was intended that it should, among other things, compile statistics, establish agencies to report the surplus or deficiency of labour in different districts, and generally "control all industries for the progress and increased benefit of all engaged therein." It was not till 1903, however, that the powers and duties of the Department were defined by "The Labour Department Act" of that year. The Act states that the Department shall administer the labour laws of New Zealand, "acquire and disseminate knowledge on all matters connected with the industrial occupations of the people, and collect and publish reliable information relating to or affecting the industries of the Colony and rates of wages." It empowers the Department to require any employer to furnish in writing the names of the persons having the principal control or management of his business, and the names of the workers employed by him, the nature of their work, hours of labour, rate of payment, etc.

(iv.)—Registration.

(*a.*) **Industrial Unions.**—Industrial unions of either employers or workers may be registered under the Act. As few as two employers, or one firm with two members, may form a union; but in the case of workers, seven are required.

The 1894 Act required a union of employers to consist of not fewer than seven persons to be entitled to register. In 1895 this number was reduced to 5, and in 1900 to 2.

The application for registration must be accompanied by a list of the members and officers of the union, two copies of its rules, and copy of a resolution passed by a majority of the members present at a meeting specially called for that purpose. The rules submitted for the Registrar's approval must provide for the appointment of a committee of management, and officers, and their powers, duties, and removal, and mode of filling vacancies; the manner of calling meetings, the

quorum, powers, and manner of voting; the mode in which industrial agreements are made and executed, and in what manner the union is represented in any proceedings before a Conciliation Board or the Arbitration Court; the custody and use of the seal, the control of the property, the investment of the funds, the periodical audit of accounts, the inspection of books by the members, the manner in which persons shall become or cease to be members, the purging of the rolls by striking off any member in arrears of dues for twelve months, the conduct of the business of the union, and the amendment or repeal of the rules.

On being satisfied that the union is qualified to register, and that the rules it has framed comply with the Act, the Registrar issues a certificate of registration. Some trouble and delay in getting a union registered has in the past been often experienced owing to the rules submitted to the Registrar not meeting with his approval. A short time ago, however, the Registrar, with the view of facilitating registration, drafted a model set of rules for the use of the unions proposing to register. The Act requires that each registered body shall be styled an "industrial union," as thus:—"The Otago Grocers' Industrial Union of Employers"; "The Wellington Drivers' Industrial Union of Workers."

Special provisions are made for the registration of trade unions registered under "The Trade Union Act, 1878." Every branch of a trade union is considered a distinct union, and may be registered separately.

In any case where a co-partnership firm is a member of a registered union of employers, each individual partner residing in New Zealand is deemed to be a member of such union, but this provision does not apply where the society to be registered is an incorporated company.

Except where its articles or rules expressly forbid registration under the Act, any company incorporated under any Act may be registered as an industrial union of employers.

A company registered out of New Zealand carrying on business in New Zealand through an agent acting under a power of attorney, may be registered as an industrial union of employers, but in so far as the articles or rules of the company are repugnant to the Act, they are, on registration, to be construed as applying to the company, and not to the industrial union.

Provision is made against an industrial union being registered under a name identical with that by which any other industrial union has been registered, and the Registrar is empowered to refuse to register a union in any case where he is of opinion that in the same locality or industrial district, and connected with the same industry, there exists a union to which the members of the union applying for registration might conveniently belong. Provision, however, is made for appeal to the Arbitration Court by any union refused registration.

The effect of registration renders a union and its members subject to the jurisdiction by the Act given to a Board and the Court respectively, and liable to all the provisions of the Act.

The Secretary of a registered union must supply a copy of the Union's rules to any person who requires it on payment of a sum not exceeding one shilling.

Other provisions made with respect to unions registered under the Act may be briefly summarised as follows:—

All fees, fines, etc., due to a union by any member may be sued for and recovered in any Court of competent jurisdiction; each union is under a penalty to forward to the Registrar in the month of January in each year, a list of its members and officers, the list to be verified by the statutory declaration of the Chairman or Secretary; every union may sue or be sued for the purposes of the Act; any union may at any time apply to the Registrar for cancellation of its registration, provided that in no case can cancellation take place during the progress of any conciliation or arbitration proceedings affecting such union until the Board or Court has given its decision, or made its award, and unless the Registrar is satisfied that the cancellation is desired by a majority of the members; if, within a certain time, a union fails to forward its yearly list of members and officers, the Registrar may, if he has reasonable cause to believe that the union is defunct, cancel its registration.

(*b.*) **Industrial Associations.**—Clause 22 reads: "Any Council or other body, however designated, representing not less than two industrial unions of the one industry of either employers or workers, may be registered as an industrial association of employers or workers under this Act."

The provisions of the Act relating to industrial unions apply to industrial associations.

Returns made up to 31st August, 1907, show that there are registered under the Act 21 industrial associations of workers, and 3 associations of employers. The workers' associations embrace the Canterbury, Otago,

Auckland, and Westland Trades and Labour Councils, the Amalgamated Society of Railway Servants, the Merchant Service Guild of Australasia (New Zealand Section), the Shipmasters' Association of New Zealand, and fourteen other federated trade associations. The associations of employers are: The Federated Boot Manufacturers, The Federated Builders and Contractors, and the United Master Bakers. A federated employers' organisation usually meets in Conference once a year for the purpose of discussing matters relating to the trade to which it belongs, although important business may, at other times, be settled by correspondence. The Boot Manufacturers' Federation has for some time been the only organisation of its kind which has arrived at a common agreement as to the wages, hours, and other labour conditions which should prevail in the boot trade, throughout the whole of New Zealand. Arbitration Court awards covering this trade in the Colony have been made since 1901.

(v.)—Industrial Disputes in Related Trades.

Clause 24 provides that an industrial dispute may relate either to the particular industry which has been referred to a Board or the Court for settlement or to any industry related to it. An industry is deemed to be related to another where both of them are branches of the same trade. For example, bricklaying, masonry, carpentering and painting are related industries, being all branches of the building trade, or are so connected that the conditions of employment or other industrial matters relating to one of them may affect the others.

The provisions of this Clause do not appear to have ever been given effect to in any dispute.

(vi.)—Industrial Agreements.

In every case the parties to industrial agreements made under the Act must be trade unions, or industrial unions, or industrial associations, or employers. Every agreement must be for a specified term not exceeding three years, and must contain the names of all the parties to it.

An agreement continues in force, notwithstanding the expiry of its term, until superseded by another agreement, or by an award of the Court, except where the registration of an industrial union of workers bound by the agreement has been cancelled.

A copy of every agreement made must be filed in the office of the Clerk of Awards, and at any time whilst the agreement is in force any industrial union, or industrial association, or employer, may be added to it by filing a notice signfying concurrence with it. An agreement may be varied, renewed, or cancelled by a subsequent agreement, but no party is to be deprived of the benefit thereof by any subsequent agreement to which he is not a party.

Every agreement duly made is binding on the parties thereto, and also on every member of any industrial union or industrial association, and is enforceable in the same manner as an award of the Court.

Previous to 1900 an industrial agreement remained in force only for the term stated in it. Occasionally a private agreement, fixing hours, wages, and other conditions, is made between employers and employees, who have not come under any award of the Court.

(vii.)—Industrial Districts and Clerks.

The Colony is divided into industrial districts, in each of which is a person who acts as Clerk of Awards. It is the duty of the Clerk to register and deal with all applications for reference of any industrial dispute to the Conciliation Board or to the Arbitration Court, to convene meetings of the Board, to keep a register in which are entered the particulars of all references and settlements of industrial disputes made to and by the Board, and "of all references, awards, and orders made to and by the Court," to supply the Registrar with "copies of or abstracts from the Register," and to issue all summonses to witnesses to give evidence before the Board or Court.

The number of industrial districts into which the Colony is divided is eight, namely, Auckland, Taranaki, Wellington, Nelson, Marlborough, Westland, Canterbury, and Otago and Southland.

In the large centres the Clerk of Awards is usually the person who also holds the office of Clerk to the Supreme Court. Until the end of 1906 he attended the sittings of the Arbitration Court in his district, but since then an officer known as the "Registrar" has attended the sittings of the Court wherever these have been held.

(viii.)—Boards of Conciliation.

There is in every industrial district a Board of Conciliation which has jurisdiction for the settlement of any industrial dispute arising in the district. The Board consists of five members, two of these being elected by the industrial unions of employers, and two by the industrial unions of workers, while these four elect "some impartial person" as Chairman. The unions of employers and workers entitled to vote for members of the Board are, of course, those which have been registered under the Act for at least three months prior to the date of the election. In any case where the proper electing authority fails or neglects to elect a Chairman or other member of the Board, the Governor may appoint a fit person to be such

Chairman or other member. Members of the Board hold office for three years, but are eligible for re-election. If the Chairman or any member of the Board dies, resigns, becomes disqualified under Section 104 of the Act (which provides that a member cannot continue to hold office if he is a bankrupt who has not obtained his final discharge, or if he has been convicted of any crime punishable with imprisonment with hard labour for a term of six months or upwards, or is a person of unsound mind, or is an alien), is proved guilty of inciting any industrial union or employer to commit any breach of an industrial agreement or award, or is absent during four consecutive sittings of the Board, his office becomes vacant, and the vacancy is filled by the proper electing authority.

The members of the Board, before entering upon the exercise of their functions, are required to make oath or affirmation before a Judge of the Supreme Court or a Magistrate, that they will faithfully and impartially perform the duties of their office.

The presence of the Chairman, and of not less than two other members, including one on each side, constitutes a quorum at every sitting of the Board. In the event of the Chairman being absent, the other members may elect one of their number to be Chairman. All matters coming before the Board are determined by a majority of the votes of the members present (exclusive of Chairman), but if the votes are equal, the Chairman has a casting vote. The Board has power to act notwithstanding any vacancy in its body, and in any case where the ordinary term of office expires or is likely to expire whilst the Board is engaged in the investigation of any industrial dispute, the Governor may extend such term for any time not exceeding one month to enable the Board to dispose of such dispute.

(ix.)—Special Boards of Conciliators.

Clauses 51 and 52 provide for the constitution from time to time of a Special Board of Conciliators to meet any case of industrial dispute. Its members must be experts in the particular trade to which the dispute relates, and must be elected in equal numbers by the employers and industrial unions of employers directly interested in the dispute, and by the industrial unions of workers so interested. The members in each case vacate their office on the settlement of the dispute.

Provision was made in the 1894 Act for the appointment of Special Boards of Conciliators, but it was not till 1901 that the law was amended to enable them to be constituted on the application of either party to a dispute. It was believed, and not without some reason, that

special Boards appointed to deal with disputes in trades of a technical character would produce more satisfactory results than a Board composed of men usually representing different trades. Only once, however, has advantage been taken of the special provision referred to. This was in July, 1907, when a Board was set up for the express purpose of dealing with the Auckland slaughtermen's dispute. The Board was composed of the Mayor of Auckland (who acted as Chairman), two employers, and two workers engaged in the trade. The result of the deliberations of this Board was that a satisfactory agreement was arrived at.

(x.)—FUNCTIONS AND PROCEDURE OF CONCILIATION BOARDS.

Before an industrial dispute can be referred to a Board for settlement, certain formalities have to be gone through (see under heading "General Provisions as to Board and Court"). The parties to a dispute must in every case be trade unions, industrial unions, industrial associations, or employers, but a party may be withdrawn, or removed, or joined at any time before the final report or recommendation of the Board is made. As soon as practicable after the reference has been filed with the Clerk of Awards, the latter convenes a meeting of the Board for the purpose of considering it. Any employer who is a party to a reference may appear before the Board, or he may appoint some other person to appear on his behalf, but he cannot be represented by a barrister or solicitor without the express consent of all parties to the reference. A barrister or solicitor is entitled to appear before the Board in a case only where he is a *bona fide* employer or worker in the industry to which the dispute relates. A dispute which has been referred to a Board may, previous to its hearing by the Board, be referred by either party to the Court of Arbitration for settlement.

In dealing with any dispute, the Board has power to summon witnesses, administer oaths, and compel the hearing and receiving of evidence. It may do whatever it thinks right for the purpose of inducing the parties to come to a fair and amicable settlement. It may adjourn the proceedings for any period it thinks reasonable to allow the parties to arrive at some agreement, or it may, with the view of facilitating a settlement, refer the dispute to a Committee consisting of an equal number of representatives of employers and workers. If a settlement is arrived at by the parties, it is to be set forth in an industrial agreement, and if the agreement is duly executed and filed, the Board reports what has taken place to the Clerk of Awards. If such agreement is not executed and filed, then the Board makes a recommendation for the settlement of the dispute as it thinks fit. The Board's recommendation must "state the period during

which the proposed settlement should continue in force, being in no case less than six months, nor more than three years, and also the date from which it should commence, being not sooner than one month nor later than three months after the date of the recommendation." It must be delivered to the Clerk by the Chairman not later than three months after the day on which the dispute was filed. The recommendation may thereafter be seen at the office of the Clerk by any of the parties, and certified copies of it may be obtained from the Clerk for a prescribed fee.

If all or any of the parties to the reference are willing to accept the Board's recommendation, either as a whole or with modifications, they may, before the dispute is referred to the Court, file either an industrial agreement or a memorandum of settlement. With respect to a memorandum of settlement, as soon as it is filed, the Board's recommendation, with the modifications (if any) set forth, operates and is enforceable in the same manner as an industrial agreement.

Within one month after the Board's recommendation has been filed, any of the parties may refer the dispute to the Court for settlement; but if at the expiration of that time no such reference is made, the Board's recommendation becomes as enforceable as an industrial agreement.

The Board is empowered, in any matter coming before it, to state a case for the advice and opinion of the Court.

After the Board has made its recommendation in a dispute the almost invariable practice of the parties is simply either to allow the recommendation to become law, or to refer the dispute to the Court within the prescribed period. The recommendation may be acceptable to one side, but the other may be dissatisfied with it, and may appeal to the Court. A case may happen where the workers and a number of the employers are willing to accept the Board's recommendation, but the dispute may nevertheless be taken to the Court, even if only one employer takes the necessary action.

Previous to 1901 a case referred to the Board had to be heard by that body before it could go to the Court. Since that year, however, either the party filing the dispute, or the other side, can pass over the Board and take it direct to the Court. If, for instance, a union of workers, filing a reference, wishes to have it heard by the Court only, all it has to do is to go through the formality necessary for referring it to the Board, and then fill in another form requiring the case to be taken to the Court. Should the workers wish to have their case dealt with by the Board, and the employers desire to go direct to the Court, all the employers who are parties to the dispute must sign a document requesting this to be done.

(xi.)—Court of Arbitration.

There is one Court of Arbitration for the whole of New Zealand. It consists of three members appointed by the

Governor, viz., a President, who has the status of a Judge of the Supreme Court, and two others, who are appointed on the recommendation of the registered unions of employers and workers respectively. On the nominations of these unions, two acting-members are also appointed, each of whom takes the place of the employers' or workers' representative on the Court, as the case may be, during his absence through illness or other cause. In any case where the permanent member is a party to a dispute, the acting-member may attend and act in his place. Each member or acting-member holds office for three years, and is eligible for reappointment.

An Amendment Act passed in 1906 altered the title of "President of the Court" to that of "Judge of the Court." It further provided that no person can be eligible for such a position unless he is eligible to be a Judge of the Supreme Court. Shortly before this Amendment Act was passed it was commonly reported that the Government intended to appoint a President of the Court who would not, as hitherto, have the full status of a Judge of the Supreme Court. The Employers' Federation took the matter up and strongly urged that the appointment should be filled only by a Judge of the Supreme Court. It feared that if any other appointment was made the person appointed might be under political influence. There appears to be little doubt that under the Amending Act the Judge of the Court will hold as independent a position as the past Presidents have held. As sub-clause 3 of clause 2 states: "The Judge so appointed shall as to tenure, and office, salary, emoluments and privileges, including superannuation allowance, have the same rights and be subject to the same provisions as any Judge of the Supreme Court. . . . ."

It was not till 1903 that provision was made for the appointment of an acting member of the Court. In that year, owing to the absence through illness of the employers' representative, it was deemed advisable to appoint a deputy, and, as Parliament was sitting at the time, an Arbitration Court Emergency Act was passed empowering the Court to make the appointment, on the recommendation of the Auckland, Wellington, Canterbury, and Otago Employers' Associations. The Clause providing for this was to remain in force only until the next appointment of members of the Court. Clauses 3 and 4 of the same Act made permanent provision for the appointment of members and acting members. A singular omission was made in this Act: The powers and duties of the deputy member were not specified. Another emergency Act, supplying the omission, was, therefore, passed about three weeks after the first one had left the Legislature.

Other clauses relating to the Constitution of the Court provide for the manner of filling casual vacancies, the administering of the oath of office, and the appointment of clerks and other officers of the Court.

(xii.)—Jurisdiction and Procedure of the Court.

As soon as any dispute is referred to the Court, it is the duty of the Clerk to notify the fact to the President. The sittings of the Court are held at such time and place as are fixed by the

President, and the Clerk must give to each member of the Court, and to all the parties concerned, at least three days' notice of the time and place of each sitting. The Court may be adjourned from time to time and from place to place.

Clause 79 reads: "Any party to the proceedings before the Court may appear, personally or by agent, or with the consent of all the parties, by barrister or solicitor, and may produce before the Court such witnesses, books, and documents as such party thinks proper."

The Court has full and exclusive jurisdiction to determine all matters before it as in equity and good conscience it thinks fit. Formal matters proved or admitted before the Board need not be proved or admitted before the Court.

At the request of any of the parties, and on payment of a fee, any person may be summoned by the Clerk to appear and give evidence before the Court, and such person may be required to produce any books and documents in his possession relating to the proceedings.

All books and papers produced before the Court may be inspected by such of the parties as the Court allows, but the information obtained therefrom is not to be made public. Any person, who, after being summoned, fails to attend, or fails to produce any book or document required by his summons, is liable to a fine of £20, or to imprisonment for one month, unless he shows there was sufficient cause for such failure. The Court is empowered to take evidence on oath, and any party to the proceedings may be compelled to give evidence as a witness.

Clause 3 of the Amendment Act of 1905 provides that the Court may, at or before the hearing of any dispute, take steps to ascertain whether all persons who ought to be bound by its award have been cited to attend the proceedings, and it may direct, whether from the suggestion of parties or otherwise, that persons in addition to those already notified, be cited to attend. The same clause also contains the following provision:—

"Any person may be made a party to an application by the applicant without an order of the Court at any time not being less than seven days before the hearing of a dispute, and the Court shall determine whether such person should properly be made a party to the award."

The presence of the President and at least one other member of the Court is necessary to constitute a sitting of the Court. The decision of the Court at any sitting is determined by a

majority of the members, or, if the members are equally divided in opinion, then by the President.

The Court may dismiss any matter referred to it which it thinks frivolous or trivial, and in such case the costs incurred may have to be borne by the party bringing it.

The Court's award, which is to be made within one month after the Court begins to hear the reference, or as soon thereafter as in special circumstances the Court thinks fit, is to be signed by the President, and to be open for inspection at the office of the Clerk of Awards in the district in which the reference arose.

In each award of the Court the following must be specified:—

(1.) Each original party on whom the award is binding, being in every case each trade union, industrial union, industrial association, or employer, who is party to the proceedings at the time when the award is made:

(2.) The industry to which the award applies:

(3.) The industrial district to which the award relates, being in every case the industrial district in which the proceedings were commenced:

(4.) The currency of the award, being any specified period not exceeding three years from the date of the award: Provided that, notwithstanding the expiration of the currency of the award, the award continues in force until a new award has been duly made, except where the registration of an industrial union of workers bound by the award has been cancelled.

The last paragraph is amended by the Amendment Act of 1905, the words, "or an industrial agreement entered into" being inserted after the words "until a new award has been duly made."

The award must also state what is or is not to be done by each party on whom the award is binding, but the Court is not to have power to fix any age for the commencement or termination of apprenticeship.

In the Upper House, during the session of 1905, an attempt was made to give the Court power to fix the age for the commencing or ending of apprenticeship, thus repealing the above provision, but, the House objecting, the proposal was withdrawn.

Sub-section 3 of Clause 90 reads: "The award by force of this Act, shall extend to and bind as subsequent party thereto every trade union, industrial union, industrial association, or employer who, not being an original party thereto, is at any time whilst the award is in force connected with or engaged in the industry to which the award applies within the industrial district to which the award relates."

By sub-sections 4 and 5 of the same clause, the Court may limit the operation of any award to any city, town, or district, being within any industrial district, or on the application of any of the parties, it may extend the provisions of such award to any industrial union or person within the district.

For some time an erroneous impression appeared to exist as to the full scope of sub-section 3, which became law in 1900. It was considered in some quarters that when an award was made in a trade in a certain district every employer engaged in that trade in the district should be bound by it, whether or not he was cited when the dispute in the trade was before the Court. It sometimes happens that when a union cites parties in a case it fails to include every employer who should be bound by whatever award is made. This took place at the time the dispute brought by the Auckland Builders and Contractors' Labourers' Union was before the Court. Some time after the Court made an award an Auckland chimney-builder and bricklayer was charged with committing a breach of the award. The respondent was not served with notice of any of the proceedings before the Conciliation Board or the Court, and he satisfied the Court that he did not know the provisions of the award. In a judgment of some length the Court said that, if the sub-section (above referred to) was to be read binding a person who was not made a party to the proceedings, its operation was manifestly unfair and contrary to all its ideas of the proper mode of forming binding judgments. Looked at singly the sub-section was widely enough worded to include in terms persons already engaged in the industry, but the question raised involved the inquiry whether its terms were compulsive, and left it open to no other construction than that such persons were bound. "A literal construction of an Act of Parliament," the Court continued, "is the worst possible construction if it can be used to effect something that Parliament manifestly never intended, especially if that something be a palpable injustice." The Court pointed out that unless restricted by it (as provided in sub-section 4) every award extended to the whole industrial district. It held that sub-section 3 of Clause 90 aptly and without unfairness applied to a person who, after the award had come into existence, entered into business in the industry to which it applied, but that the Legislature never intended to bind persons who were not parties to the award.

Clause 91 provides that any award in force at the coming into operation of the Compilation Act of 1905, notwithstanding that its currency has expired, continues in force until a new award is made under that Act, except where the registration of an industrial union of workers bound by such award has been cancelled.

The Court may, on giving notice, extend such award to any union or employer within the district, and engaged in the industry to which the award applies.

This provision was inserted in the Amendment Act of 1901, the clause containing it stating that any award in force at the coming into operation of the principal Act (1900) was to continue in force until a new award was made. It prevents, of course, any award from becoming a dead letter after its nominal term has expired. For example, some awards made six or seven years ago are still in operation. Both parties may be satisfied with an award, and therefore, make no application to

the Court for a new one. In some instances the Court, when requested to make a new award, renews the old one for a further period. One award, at least, namely the Christchurch Engineers', has become a dead letter. It came into force in May, 1898, and expired in May, 1900, about five months before the 1900 Act came into operation. No application has since been made for a fresh one.

With respect to every award, the Court has power to remedy any defect in it; extend it so as to join as party to it any trade union, industrial union, industrial association, or employer in New Zealand not at the time bound by it, but connected with or engaged in the same industry as that to which the award applies; but the Court is not to act under the latter provision except where the award relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in another industrial district, and a majority of the employers and of the unions of workers concerned are bound by the award. In case any objection is lodged to the proposed extension of the award, the Court is to sit and hear it in the district from which it comes, and may amend or extend the award as it thinks fit.

It is provided further that, notwithstanding anything contained in the foregoing provision, the Court may extend an award to another industrial district so as to join and bind as parties to an award any trade union, industrial union, industrial association, or employer, where an award relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in the industrial district where the award is in force.

This latter clause became law in 1903, and gave power to extend an award without the condition that a majority of the employers and of the unions of workers in the industry are already bound by the award.

Besides the provisions already given relating to the extension of an award the following clause was passed in 1905:—

(1.) "Notwithstanding anything to the contrary in the principal Act, the Court shall have full power, upon being satisfied that reasonable notice has been given of any application in that behalf, to add any party or parties to any award; and thereupon any such party or parties shall be bound by the provisions thereof, subject to any condition or qualification contained in the order adding such party or parties.

(2.) Orders adding parties heretofore made by the Court shall be as valid as if made in exercise of the foregoing power, whether made in pursuance of a reservation in the award or not."

Every award extends to and binds every worker who is at any time whilst it is in force employed by any employer on whom the award is binding, and if any such worker commits any breach of the award he is liable to a fine not exceeding £10.

The above is the substance of the clause passed in 1905, the clause enacted in 1900 differing only slightly from it. Previous to the latter year workers not members of a union do not appear to have been regarded as parties to an award, and it is only within the last few years that workers, whether members or non-members of a union, have been fined for a breach of an award, such as accepting a rate of pay below the minimum prescribed.

Clause 94 provides that where workers are engaged upon different trades in any one business of any particular employer, the Court may make one award applicable to the whole or part of the various branches constituting the business of such employer. Before the Court can exercise this power, notice must be given to the respective industrial unions of workers engaged in any branch of the business.

This clause, introduced in 1901, is specially applicable to an industry such as that carried on by the Frozen Meat Companies, which employ a large variety of workers. At present in some freezing works no fewer than seven awards are in operation.

Clause 96 reads: "Proceedings in the Court shall not be impeached or held bad for want of form, nor shall the same be removable to any Court by *certiorari* or otherwise; and no award, order, or proceeding of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of Judicature on any account whatsoever."

The Court in its award, or by order made on the application of any of the parties while the award is in force, may determine what is a breach of the award, and what sum, not exceeding £500, is to be "the maximum fine payable by any party in respect of any breach."

The Court may also, in its award, prescribe a minimum rate of wages, with special provision for a lower rate being fixed in the case of any worker unable to earn the prescribed minimum.

Every Inspector of Factories is also an Inspector of Awards. He must see that the provisions of any agreement, award, or order of the Court are observed.

Every Inspector of Mines has a similar duty imposed upon him with respect to the observance of any agreement, award, or order in any coal-mine within his district.

An Inspector of Awards may require any employer or worker to produce for his examination wages-books and overtime books, and he may exercise all the powers conferred on Inspectors of

Factories by Section 6 of the Factories Act, 1901. Except for the purposes of the Act, an Inspector must not disclose to any person any information he obtains. Any contravention of this provision renders the Inspector liable to a fine not exceeding £50.

Inspectors of Factories were made Inspectors of Awards by the Amendment Act of 1903. Previous to that year, cases of alleged breach of award were usually initiated and conducted by workers' unions. A large number of enforcement cases are now conducted by the Inspectors; a few others are in the hands of counsel.

Clause 101 contains provisions for the enforcement of awards. The Court may award costs in any case, but no costs must be given against the Inspector. The aggregate amount of fines payable under any award is limited to £500. "All property belonging to the judgment debtor (including therein, in the case of a trade union or an industrial union or industrial association, all property held by trustees for the judgment debtor) shall be available in or towards satisfaction of the judgment debt, and if the judgment debtor is a trade union or an industrial union or an industrial association, and its property is insufficient to fully satisfy the judgment debt, its members shall be liable for the deficiency: provided that no member shall be liable for more than £10."

The foregoing provisions are also applicable in the enforcement of industrial agreements.

Clause 4 of the Amendment Act of 1905 empowers the President of the Court to state a case for the opinion of the Supreme Court or to obtain the opinion of any of the Judges of that Court respecting any question touching the jurisdiction of the Court or of any Board of Conciliation or Special Board.

(xiii.)—General Provisions as to Board and Court.

The following persons are disqualified from holding office as Chairman or as member of any Board, or as member or acting-member of the Court: —

"(*a*) A bankrupt who has not obtained his final order of discharge; (*b*) any person convicted of any crime for which the punishment is imprisonment with hard labour for a term of six months or upwards; (*c*) or any person of unsound mind; or (*d*) an alien."

An industrial union of workers may be a party to an industrial dispute notwithstanding that no member of the union is employed by any party to the dispute, or is personally concerned in it.

Before an industrial dispute can be referred to a Board or to the Court, or before any application can be made to the

Court by any union or association for the enforcement of any industrial agreement or award, the following formalities must be complied with:—

In the case of an industrial union a resolution deciding to file a reference or to make application for an enforcement, must be passed at a special meeting called for the purpose, a majority of all the members present at the meeting voting in favour of it. The resolution, if thus carried, must be confirmed by a subsequent ballot of all the members.

In the case of an industrial association similar action must be taken, except that the resolution adopted at the meeting of the Association must be confirmed at special meetings of a majority of the unions represented by the Association.

Clause 107 provides that until a dispute, which has been referred to the Board, has been finally disposed of by the Board or the Court, neither the employers nor the workers affected by the dispute must do anything, either directly or indirectly, in the nature of a strike or lock-out, or of a suspension or discontinuance of employment or work. The relationship of employer and employed is to continue uninterrupted by the dispute, or anything arising out of the dispute or anything preliminary to the reference of the dispute. The maximum penalty for committing a breach of this section is £50.

Sub-section (*c*) of the same clause reads:

"The dismissal of any worker, or the discontinuance of work by any worker, pending the final disposal of an industrial dispute shall be deemed to be a default under this section, unless the party charged with such default satisfies the Court that such dismissal or discontinuance was not on account of the dispute."

The Amendment Act of 1905, amends this sub-section by inserting after the word "dismissal" (in both places where it is used), the words "or suspension." In clause 16 it is provided that a worker is deemed to be dismissed when he is suspended for a longer period than ten days.

The same Act contains a new provision relating to strikes and lock-outs. It provides that any industrial association, or employer, or any worker, which or who shall strike or create a lock-out, or take part in a strike or lock-out, or propose, aid, or abet a strike or lock-out, or a movement intending to produce a strike or lock-out, shall be liable to a fine not exceeding £100 in the case of a union, association, or employer, or £10 in the case of a worker. No worker is subject to a fine merely because

he refuses to work at the rate of wages fixed by any award or industrial agreement, unless the Court is satisfied that such refusal was in pursuance of an intention to commit a breach of this provision. This section applies only when there is an award or industrial agreement in force in the trade, and in the district in which a strike or lock-out has occurred or is impending.

Clause 108 reads: Every employer who dismisses from his employment any worker, pending the final disposal of an industrial dispute, shall be deemed to be a defaulter under this section, unless the party charged with such default satisfies the Court that such dismissal or suspension or discontinuance was not on account of the dispute.

In Clause 109 it is provided that if any combination of either employers or workers take proceedings with the intention of defeating any of the provisions of an award, a breach of the award has been committed, and the offenders are liable accordingly.

Clauses 108 and 109 were passed in November, 1903. The furniture makers in Auckland had, a few months previous to the sitting of Parliament in that year, dismissed, or "locked-out" a number of their men considered incapable of earning the minimum wage, which the Court, by a new award had fixed, and it is understood that the above provisions were intended to prevent a similar "lock-out".

The Board or the Court may, when dealing with any industrial dispute involving technical questions, direct that two experts, representing the employers and workers respectively, be nominated to sit as experts.

Any person guilty of contempt of the Board or Court is liable to a penalty not exceeding £10, and "if any person prints or publishes anything calculated to obstruct or in any way interfere with or prejudicially affect any matter before the Board or Court, he shall for every such offence, be liable to a fine not exceeding £50."

Sub-clause 2 of Clause 116 reads:—

"A recommendation or order of the Board, or an award or order of the Court, shall not be void or in any way vitiated by reason merely of any informality or error of form, or non-compliance with this Act."

Any Board and the Court, and any member of either body, duly authorised, may, at any time between sunrise and sunset, enter the premises of any employer and inspect any work, material, machinery, or anything in such premises, and may interrogate any person or persons in respect of any thing contained therein. Any person who obstructs the Board or

Court, or any member or officer thereof in the exercise of any power conferred by this section, is liable for every offence to a fine not exceeding £50.

(xiv.)—Government Railways.

Special provisions are made with respect to the Government railways. The Minister for Railways may enter into industrial agreements with the Amalgamated Society of Railway Servants, registered under the Act, in all respects as if the management of the Government railways were an industry, and he were the employer of all workers employed therein. If any industrial dispute arises between the Minister and the Society, it may be referred to the Court, and if the Court considers the dispute sufficiently grave to call for investigation and settlement, it must notify the Minister thereof, and appoint a time and place at which the dispute will be investigated and determined. In making any award the Court must have regard to the schedule to "The Government Railways Department Classification Act, 1896."

The Board has no jurisdiction over the Society, and the Society is not entitled to vote for the election of any member of the Board. The Society, however, has the right to nominate a person to fill the position of workers' representative on the Court.

(xv.)—Crown or Government Departments.

Except in the case of the Government railways, nothing in the Act applies to the Crown or to any Department of the Government of New Zealand.

CHAPTER IV.

CONCILIATION BOARDS IN OPERATION.

Conciliation Boards, which were regarded by the author of the New Zealand Act as a most essential part of the system for settling industrial disputes, have of late years had an almost nominal existence. Many reasons have been given for their practical failure. It has been said that they are not properly constituted. It may be pointed out that the members of a Board are seldom men specially qualified to adjudicate upon industrial disputes. The four men representing the employers and workers may have a good knowledge of the trades in which they are individually engaged, but it is hardly to be expected that their acquaintance with most other trades can be other than very limited. For example, the members representing the workers may consist of a painter and a carpenter, while the employers may be represented by a printer and a coal-merchant. The Chairman may be a lawyer, or a business man, or a clergyman. If the appointment is left to the Government, the man selected is usually one who is strongly in sympathy with the aspirations of the Labour Party. Now, let anyone imagine a Board constituted after that fashion being called upon to fix the rates of pay, the hours to be worked, and general conditions of labour in a technical trade, of which the members know next to nothing. In such a case there seems to be no alternative but for the Board to make the best guess it can at the terms which should be imposed on the employers. Evidence is, of course, given on behalf of the workers' union in support of its claims, but even aided with this, and with statements made by the employers, the Board must feel the task of fixing the wages in an important industry to be an exceedingly difficult one. Some years ago a Board drew up piecework logs for the boot-making and woollen industries, the time given to each log being about two hours. Experts in both trades would have found it necessary to devote several sittings to the work.

An employers' association, in a statement it submitted to the Parliamentary Bills Committee of the House of Representatives in 1900, expressed the opinion that Conciliation Boards, as constituted under the New Zealand Arbitration Act, were

absolutely useless. It recommended the establishment of Boards consisting of a sufficient number of employers and workers to ensure that all trades would be represented. On a dispute being lodged, there should be a special Board appointed, two at least of whose members should be experts in the trade in which the dispute has occurred. It was of opinion that a Board, thus constituted, would claim the respect and confidence of both employers and workers.

The Government did not see its way to adopt this suggestion, but made provision for the constitution of a Special Board of Conciliators elected in the same manner as the ordinary Conciliation Board, "to meet any case of emergency, or any special case of industrial dispute." Only once, as mentioned in the last chapter, has such a Board been called into existence.

Another reason given for the almost complete collapse of the Boards is that since 1901 either party to an industrial dispute can pass over the Board and go to the Court. There can be no doubt that a large percentage of the disputes which have arisen since that amendment in the Act was made have been sent direct to the Court, both employers and workers taking advantage of the provision, and thus the Board has been seldom called into requisition. I have been informed by several secretaries to unions that the chief reason why the workers prefer to go to the Court is because an accepted recommendation of the Board does not carry with it the same power as does an award of the Court. A recommendation of the Board is binding only on those employers attached to it at the time it is made. An award of the Court is binding not only on the employers made parties to it when it comes into force, but also on any employer who subsequently starts business in the district. With the view of popularising the Boards, and making them more useful, proposals have been made from time to time, either by the Government or by the Labour Party, to have the clause providing for direct reference to the Court repealed, and to make the Board's decisions as binding as an award of the Court. So far, however, Parliament has not shown much inclination to interfere with the present functions of the Board.

It is perhaps hardly necessary to cite the opinions given by both employers and workers as to the value or otherwise of the Boards. While on the one hand some aver that the Boards are useless, others contend that they are a necessary part of the system, and that in many cases they have accomplished good

work. It must be acknowledged that in one or two centres there have been Boards whose personnel has been of the right kind, and whose work has met with a fair amount of success. In other districts the Boards have been composed of men of the most partisan character. Sometimes the chairman, who, according to the Act, ought to be an "impartial person," would show a decided inclination to give the workers practically all they demanded, and would make no serious attempt at conciliation. It is a matter of notoriety, too, that certain members of Boards connected officially with workers' unions, were singularly zealous in the creation of disputes. Their action, indeed, has been frequently commented upon, since for each sitting of the Board they are entitled to the fee of a guinea.

The name "Conciliation Boards" would imply that the chief function of such bodies is to endeavour to conciliate the parties brought before them. The Legislature undoubtedly intended that the conciliatory element should be predominant in the Boards. This intention, however, has been carried out only to a very limited extent, and has been largely due to the constitution of the Boards, at whose sittings the members have, generally speaking, never pretended to attend except as partisans. In some cases strong hostility has been exhibited between the two opposing parties on the Boards, and heated scenes have not been uncommon. The Boards, too, in the hearing of disputes, have, in most cases, followed the practice of the Court in taking evidence on oath from both sides, thus making themselves nothing else but courts of law. A few years ago a Chairman of a Board was remarkably successful in settling the comparatively few cases that came before him. His practice was to dispense with the taking of evidence, bring the representatives of the parties together, and act as their chairman. By exercising tact and patience he was able to conciliate the parties, and thus bring about a settlement acceptable to them.

The unpopularity of the Boards was probably at its height in 1900 and 1901. There was a general outcry for their abolition, but it was hardly to be expected that the Government, which has generally shown a disposition to increase rather than to lessen the machinery of the Act, would agree to such a course. The provision giving power to pass over the Boards was carried at the instance of the employers in the face of strong opposition from the labour element in Parliament, and the Secretary for Labour, in his report of 1904, makes the comment that the result of the amendment "has been to practically suspend the operation of the Boards."

The following tables give the number of cases brought before the Boards, and the number settled by them, from the coming into operation of the Act until immediately after the Amendment Act of 1901 was passed, and from that time until the end of 1905.

Table showing number of disputes brought before Conciliation Boards, and how disposed of, from the coming into operation of the Act to 31st December, 1901:—

District.	Cases before Boards.	Settled by Boards.	Partly Settled.	Cases Withdrawn.	Sent to Court.
Auckland	36	18	—	2	16
Wellington	48	5	1	2	40
Taranaki	1	—	—	—	1
Nelson	1	—	—	—	1
Westland	13	4	—	—	9
Canterbury	53	8	1	4	40
Otago	54	16	—	—	38
TOTAL ...	206	51	2	8	145

Table showing number of disputes brought before Conciliation Boards, and how disposed of, from 1st January, 1902, to 31st December, 1905:—

District.	Cases before Board.	Settled by Boards.	Sent to Court.
Auckland	6	4	2
Wellington	10	3	7
Nelson	3	1	2
Westland	1	—	1
Canterbury	15	11	4
Otago and Southland	6	1	5
TOTAL	41	20	21

Table showing number of disputes settled by Conciliation Boards and by the Arbitration Court from the coming into operation of the Act to 31st December, 1901:—

District.	Cases settled by Board.	Cases settled by Court.	Total.
Auckland	18	8	26
Wellington	5	30	35
Canterbury	8	32	40
Otago and Southland	16	26	42
Westland	4	4	8
TOTAL	51	100	151

Table showing number of disputes settled by Conciliation Boards and by the Arbitration Court from 1st January, 1902, to 31st December, 1905:—

District.	Cases settled by Board.	Cases settled by Court.	Total.
Auckland	4	43	47
Nelson	1	3	4
Taranaki...	—	4	4
Wellington	3	37	40
Westland	—	4	4
Marlborough	—	1	1
Canterbury	11	32	43
Otago	1	39	40
TOTAL	20	163	183

The Labour Party would very much prefer that all disputes should be heard first by the Boards, provided that the decisions of the latter become law as soon as issued, and remain operative until the Court is able to review them. At the present time

a recommendation of the Board can be appealed against within a month after its issue, and the case may not be heard by the Court for a considerable time thereafter. Further, in consequence of the Court having to move over the whole of the Colony, some cases sent direct to it may not be dealt with for eighteen months or more after the date of filing. It is therefore an obvious advantage to trade unions to have their disputes settled by a tribunal which is always on the spot. It is doubtful, however, whether Parliament will ever amend the law in the direction proposed. The majority of the employers in the Colony now appear to have little confidence in the Boards, as at present constituted, and to put these almost in the same position as that which the Court occupies, so far as their decisions are concerned, would introduce a compulsory element which the promoters of the original measure never intended should be associated with the Boards, and which would be almost certain to lead to serious trouble.

CHAPTER V.

ARBITRATION.

(i.)—Introductory.

Although the Arbitration Act came into force on the 1st January, 1895, it was not until 1896 that the Arbitration Court was called upon to settle industrial disputes brought under the Act. The Court from the first had very large powers conferred upon it, and had no precedent to guide it in its interpretation of these powers. Its responsibilities were very great, because, by a mistake in any of its awards, it could do irreparable injury to an industry. The employers of the Colony have generally admitted that in the discharge of its duties the Court has shown the utmost impartiality, and although in many cases awards have been made in favour of the workers, the employers have made little or no complaint against the Court itself. The policy of some of the Labour Unions towards the Court in connection with the latter's awards will be dealt with in another chapter.

(ii.)—Origin of an Industrial Dispute.

In giving a description of the working of the Arbitration Act, I think it advisable, first of all, to deal with the origin of an industrial dispute. Nearly all the industrial disputes dealt with under the Arbitration Act of New Zealand have not arisen between individual employers and their workers, but have generally originated in the following manner: A section of the workers, perhaps embracing only a comparatively few persons, resolve that in the trade in which they are employed an effort shall be made to have their wages raised, their hours of labour shortened, and other favourable conditions secured. The general body of the workers, in all probability, have made no complaint about the conditions under which they are working, but they are asked to join the few who have decided on action, it being pointed out to them by the leaders what advantages will follow their falling into line. What are the workers going to do in

order to attain their object? Are they first of all going to have a friendly conference with their respective employers, and ascertain whether the demands they purpose making can be granted? It is perhaps hardly necessary to say that such a method of procedure is not even discussed. There is at hand machinery which enables the workers to prosecute their demands without their recognising, except in a formal way, the interested parties on the other side. They form a union, which need not be composed of more than seven persons; indeed, the members of the union need not be connected with the trade at all. The union is registered under the Conciliation and Arbitration Act, and it prepares a statement of wages and conditions of labour. The statement is sent by post to each employer in the trade and in the district, with the request that a reply be forwarded by a given date as to whether or not the terms are accepted. A conference between representatives of both sides may also be suggested. The following circular is similar in substance to the one sent by other labour unions:—

Christchurch, 21st September, 1905.

I have been instructed by above union to forward you a copy of conditions of labour and wages adopted by the above union, which they desire to become binding on you and all the other employers of....., in the Industrial District of Canterbury. You are respectfully requested to state in writing on or before 4th October, 1905, your willingness or otherwise, to be bound by the Union's conditions. Failing a reply the Union will conclude that you object. The Union's proceedings are made under the Conciliation and Arbitration Act.

With regard to the demands usually made by the unions, I give below some examples of these concerning chiefly hours and wages, and alongside of them the awards of the Court.

CHRISTCHURCH BUTCHERS.

Union's Demands.	Court's Award, 18/9/01.
Hours—54 per week.	Hours—56 per week.
Weekly wage of £3 5s. and meat	Weekly wage of £3 and meat.
„ „ £2 15s. „	„ „ £2 10s. „
„ „ £2 5s. „	„ „ £2 1s. „

Considerable reductions were also made by the Court in the wages for boys and other hands.

In October, 1905, the Operative Butchers' Union asked for new conditions with the following results:—

Union's Demands.	Accepted Recommendations of Conciliation Board, 18/10/06.
Hours—52.	Hours—56
Weekly wage of £3 15s.	Weekly wage of £3 10s.
„ „ £3 5s.	„ „ £3.
„ „ £2 16s.	„ „ £2 11s.
Eleven holidays without stoppage of pay.	Nine holidays without stoppage of pay.

Note.—With the exception of two matters, the recommendations of the Board are what both parties had agreed to. No meat is given with the weekly wage as in the Court's award of 1901, but this is compensated for by the wage being increased by 10/- per week. The men have received practically no increase.

CHRISTCHURCH DRIVERS.

Union's Demands.	Court's Award, 9/10/02.
Drivers of two horses £2 10s. per week.	Drivers of two horses £2 6s. per week.
Drivers of one horse £2 5s. per week.	Drivers of one horse £2 2s. per week.
Hours—44 per week.	Hours—47½ per week.

CHRISTCHURCH CYCLE-WORKERS.

Union's Demands.	Court's Award, 17/10/02.
Hours—48 per week.	Hours—48 per week.
Wages—£2 14s. per week.	Wages—£2 8s. per week.

CHRISTCHURCH IRON AND BRASS-MOULDERS.

Union's Demands.	Court's Award, 7/8/05.
Hours—48 per week.	Hours—47½ per week.
Wages—1/4½ per hour.	Wages—1/1½ per hour.
Employment of apprentices to be limited to 1 for every 3 journeymen.	No limitation of apprentices.

CANTERBURY FLAX AND TWINE MILLS EMPLOYEES.

Union's Demands.	Accepted Recommendation of Conciliation Board, 21/9/04.
Working foreman—	
12/- per day.	£2 10s. per week of 48 hours.
Engine Driver.—Second class.	
£3 10s. per week.	8/- per day.
Stripper or Feeder.	
10/- per day.	7/- per day.
Chief Paddock-hand.	
9/- per day.	7/6 per day.

The wages of many other workers were similarly reduced. Conditions of an unusual character were also asked, but were ultimately withdrawn.

The policy pursued by the Canterbury unions when seeking for better conditions is, in all respects, similar to that followed by the unions in other centres.

If the statement submitted by the union is either ignored or rejected by the employers, and the union is resolved to press its claims, "an industrial dispute" is constituted, and is referred to the Conciliation Board or Arbitration Court for settlement.

It is well-known that in the majority of cases referred to the Board or Court, the workers have no real grievance. When the Canterbury Woollen Mills dispute was heard in 1902, the Court visited the large factory belonging to the Kaiapoi Woollen Company, and, in giving its award, made the following comments:—

A very large number of witnesses, mainly from the employees of the Kaiapoi Company, have been examined before the Court. After hearing these witnesses, between seventy and eighty in number, the Court visited and inspected in every department the Kaiapoi Mills, and, after two days' inspection and careful inquiry at the mills, the Court is satisfied that the workers generally are employed under very excellent conditions, and that the company have in these mills carefully and effectively provided for the interests of the workers.

The demands of the union are substantially that the hours of labour should be reduced from forty-eight to forty-five; that the log by which the pieceworkers work should be abolished; that the employment of youths should be restricted; and that preference should be given to the members of the union.

"The Factories Act, 1901," permits the hours of work in woollen-mills to forty-eight per week, and the Court, after fully satisfying

itself that the conditions under which the workers in the Kaiapoi Mills are employed are exceedingly good, sees no reason to restrict these hours. To do so would seriously hamper the company, and would also restrict the earning-capacity of the workers and injure them also.

The demands of the union that the log should be abolished, and that a weekly wage at the rates asked by the union should be fixed for all workers, really amount to an increase asked for of about £11,000 upon a present wages-sheet of about £25,000 per annum. A very large proportion of the workers are female workers working at piece rates. We have considered the evidence carefully, and have examined the wages-sheets, and have made a careful investigation into the conditions of the work and the earnings of the piece-workers, and **we are satisfied that no real cause for complaint exists, and that these workers are well treated and well paid under the present system, and we make no alteration in the conditions at present existing.**

Commenting on this case, the "Mercantile Gazette" (N.Z.) said:—"Hundreds of men and women, girls and boys, all in full work at good pay, and under the most favourable conditions, pretend to consider that they have grievances against their employers of such a character that it becomes necessary to invoke the interference of the Court to remedy them. The Court found that they had practically nothing to complain of . . . but notwithstanding this, they asked for an increase of wages which, if granted would have . . . thrown on to the manufactured article a cost of labour which must have closed every market for the Company's goods. . . We can only suppose that some of them may have thought that an increase of pay or shorter hours . . . might follow whether they deserved it or not, if they brought about an industrial dispute framed upon conventional grounds."

In a decision given in December, 1905, the Federal High Court of Australia gave its opinion as to what constitutes an industrial dispute under the Arbitration Act of New South Wales. The judgment attracted some attention in New Zealand, and the question was asked whether a similar decision could not be obtained in this country. Before, however, dealing with the action taken in New Zealand, and its results, it will be necessary to give some particulars of the Australian case. An industrial union of workers registered under the Arbitration Act as the "Colliery Employers' Federation of the Northern District of New South Wales," referred to the Arbitration Court disputes which had occurred between the Pelaw Main Colliery proprietors and their employees. The original disputes, begun in 1903, were not, it appears, dealt with by the Arbitration Court, and a summons was taken out in February, 1905, calling on the employers "to show cause why the scope of the original claim

should not be extended so as to include certain fresh disputes which had arisen." This summons, it is stated, lapsed, and in the following June all the miners in the employment of the Colliery Company left without notice, and did not return to work. Shortly afterwards another summons, taken out in the original claim, came on for hearing on the 5th July. At that time all the members of the workers' union, with one possible exception, had left the Colliery proprietors, who worked the mine with some other men who were not members of the union. The union was thus in the position of acting on behalf of men who did not belong to it, and it was urged that the Arbitration Court had therefore no jurisdiction to entertain the union's application of claim. Leave was granted to raise the question "whether an industrial union of employees was entitled to have litigated the conditions of employment existing under an employer who does not employ any of its members." The decision of the Supreme Court was that the Arbitration Court had "no jurisdiction to entertain an application by an industrial union of employees to have the conditions of employment in the industry regulated by the Court, unless there is in existence an industrial dispute as to those conditions between employees who are members of the union and their employers." This decision the Federal High Court, on appeal, confirmed. The Chief Justice in his deliverance, not only gives his interpretation of the Arbitration law, but lays down some general principles which, he states, are recognised in all Courts of Justice. After quoting from a previous judgment of the High Court, in which it was pointed out that the Arbitration Court is not to "constitute a Board of Trade, or a municipal body with the power to make by-laws to regulate trade," the Chief Justice says that "the first condition of a litigation is that there shall be a plaintiff, and the first condition of a plaintiff's right to sue is that he shall be interested in the matter to be decided. *That is a condition which governs the proceedings of all Courts of Justice.*" Section 26 of the Arbitration Act, defining the Court's jurisdiction is quoted, as is also Section 28, which provides that "no matter within the jurisdiction of the Court may be referred to the Court, nor may any application to the Court be made except by an industrial union *or by any person affected or aggrieved by an order of the Court.*" His Honour goes on to say that in order that the nature of an industrial dispute may be ascertained, reference has only to be made to the interpretation section, and if it is found that "there is a dispute

in the strict and literal meaning of that section, there is power at once for any union to refer it to the Court and so to give rise to the exercise of the Court's jurisdiction." But regarding that point, the Chief Justice makes the important remark that "the industrial union, as a collective body in the nature of a corporation, has no individual relation with the employer at all. A union as such does not contract with the employer." It is explained that an industrial dispute between an employer and employees cannot be referred to the Arbitration Court except by an industrial union, or possibly under other powers contained in section 28, "but," it is asked, "does it follow that any claim that an industrial union may make in the abstract is an industrial dispute? Before there can be an industrial dispute, it is a truism to say there must be a dispute, and it must be a dispute relating to industrial matters. Industrial matters are matters relating to the terms and conditions of employment between employer and employee in an industry. So that *until employer and employees differ as to the terms and conditions of employment, there is no industrial dispute.*" The Chief Justice further says: "So soon as a dispute arises, an industrial union may take it up, and refer it to the Arbitration Court. But if the Union has nothing to do with the particular employees who are parties to the dispute, what interest, in the legal sense, has it in the dispute? How can it be said that it as plaintiff has any legal interest in the matter? Here are employers and employees going along in perfect amity. A union outside the employees altogether is dissatisfied with the conditions of peace and quietness which exist, and wishes to have an industrial dispute, and the contention is that it is entitled to interfere and invoke the aid of the Arbitration Court, not to quiet an existing dispute, but to create one and get it settled. I cannot think that that was the intention of the legislature. It certainly does not fall within the ordinary meaning of the terms used in the Act, and I do not think that it follows as a necessary inference from the language relied upon by the appellants. That was the view of the Supreme Court, and in that I think they were quite right. I think that the union was not entitled to create an industrial dispute between an employer and employees with whom they have no connection. So far, therefore, as in this case the Arbitration Court has assumed to deal with the questions raised by the union as to the conditions which should govern the relationship between the respondents and their employees for the future, I think that they have gone beyond their jurisdiction. . ."

About two months after this judgment was delivered, the President of the Arbitration Court gave an explanation of the main points contained in the judgment. The President thought some explanation was necessary, as the Arbitration Court had given one judgment based on the decision of the High Court. He considered that the deciding point, "that an industrial union of employees cannot carry on an industrial dispute with an employer who has none of its members in his employ, though most valuable as a declaration of the law, deals with a case which very rarely arises, and is therefore of little practical consequence in the great majority of disputes in this Court." He thought, however, that the opinion expressed by the High Court, that in order to found the jurisdiction of the Arbitration Court in any case it was necessary to show that a dispute between some employer and his employees existed, and had been taken up by the industrial union, was a decision of great practical importance. "Hitherto," he said, "nearly all disputes have been originated by industrial unions. This has arisen from what it now appears was a misunderstanding of the Act, which defines an 'industrial dispute' as a 'dispute . . . arising . . . between . . . an industrial union of employers on the one part, and an industrial union of employees . . . on the other part.' It is evident that a different practice must now be adopted. The industrial unions must not originate the dispute; they must wait till some of their members find themselves in dispute with their employers or employees, as the case may be, when, if the union thinks fit, it can take up the dispute and bring it before this Court."

The President further stated that he saw nothing to justify the view that employees must in the future personally approach their employers if they wished for better conditions. The dispute would certainly have to originate between a particular employer and the men in his employ, and it would have to be "a *bona fide* and honest dispute arising from a real dissatisfaction on one side or the other with the prevailing conditions. It must not be an artificial dispute got up merely to evade the decision of the High Court. But," continued the President, "assuming the existence of an honest dissatisfaction, there seems to be no reason why the party feeling it may not express his wishes through an agent. The men, for instance, may depute one of their own number, or someone not of their number at all, and who has nothing to fear, to approach or write to their employer, and to conduct the negotiations. Such outside person

might even be the secretary of the union (though there are certainly strong reasons why someone else might be preferable), but in such a case it would have to be very clear that he was authorised by, and acting for, the particular body of employees only, and not the union at large; and his position would be a difficult one, for it would be almost impossible for him to think only of the men he was representing in the dispute, and not of the union generally, of which he would be the servant. If the result of the negotiations—conducted with an honest desire to arrive at a settlement, and not merely to pave the way for a dispute in this Court—is that no agreement can be arrived at, the industrial union of employers can intervene and take the matter up."

I understand that the High Court's decision has resulted in a number of cases being thrown out by the Arbitration Court, as they were found not to be "disputes" within the meaning of the Act. The President's opinion, that the employees need not personally negotiate with their employers if they wish to obtain better conditions, was, I believe, to be tested in the two Courts of Appeal.

It was in the Otago Province of New Zealand that some employers, acting under the advice of a lawyer of repute, decided to have a case heard at the Supreme Court with the view of obtaining a decision on the question as to what constituted an "industrial dispute" under the New Zealand law.

The reference selected was one filed by the Otago Coalminers' Union of Workers, the other party to the dispute being the Cromwell and Bannockburn Collieries Company (Limited). The motion before the Supreme Court was that the Conciliation Board be prohibited from sitting at Cromwell to hear the dispute on the grounds that the plaintiffs had never accepted any recommendation of any Board of Conciliation, and were not bound by any industrial agreement or award of the Arbitration Court, that no industrial dispute had at any time arisen between the plaintiffs and the persons employed by them, or the Otago Coalminers' Union; and that the application for the hearing of the dispute and the proceedings thereon were an abuse of the provisions of the Act.

The defence was that an industrial dispute had arisen, and that the application and proceedings were in the proper exercise of rights, powers, and privileges of the defendants in due course of law.

Counsel for the plaintiffs argued that a simple request by the Union, followed by a simple refusal by the employer did not constitute a dispute under the Act. A dispute involved the idea of strife. Interposing, Mr. Justice Cooper remarked that if that was the case, the Arbitration Court for five years previously had acted in numbers of cases without jurisdiction. Counsel replied that that was probably so, and went on to say that the whole position would be very different if the Arbitration Act were an Act to regulate trade; and it was because it had been treated as an Act to regulate trade that so many of these difficulties had arisen. The Act was not designed to enable unions to stir up strife between workers and employers who were in agreement.

For the defence it was held that the term "industrial dispute," as used in the Act, was really intended to cover every case in which there was practically a disagreement. There need not necessarily be "conflict" or "strife." The Act provided a way in which such a difference might be settled without reaching the stage of actual conflict or strife.

If, plaintiff's counsel replied, this idea of a dispute was the right one, the name of the Act should be altered. Counsel maintained that under the Act "dispute" must imply something of the nature of grievance or disaffection. There must be something more than mere disagreement of mind (L. & N. E. Railway v. Billington, 1499, app. css. 79).

Mr. Justice Cooper's decision, which was given on the 6th August, 1906, was as follows:—

The Industrial Conciliation and Arbitration Act defines an Industrial dispute as any dispute arising between one or more employers or industrial unions or associations of employers and one or more industrial unions or associations of workers in relation to industrial matters. "Industrial matters" means all matters affecting or relating to work done or to be done by workers, or the privileges, rights, and duties of employers of workers in any industry, and include inter alia, the wages and remuneration of workers, and the hours, mode, terms, and conditions of employment, and the claim of members of an industrial union of workers to preference of employment over non-members. No individual worker, nor any association of workers which is not a "trade union," "an industrial union," or "an industrial association," can be a party or parties to any industrial dispute. Although it is, therefore, essential before a dispute can be the proper subject for inquiry under the Arbitration Act that the workers must be represented by a trade or industrial union or an industrial association, it is not essential that any member of an industrial union or association shall be in the employment of any employer party to the dispute, or be personally concerned in the dispute (section 105 of the Act of 1905).

There is no provision corresponding to this section in the New South Wales Arbitration Act, and the decision of the Federal High Court in

the Pelaw Main Colliery case (22nd December, 1905), upon which Mr. Hosking relies, is distinguishable from the present case upon this ground, the main ground of the decision of the High Court in that case being that the union there had no legal interest in the subject-matter of the alleged dispute, as the men employed in the mine were all non-unionists. Under our statute the fact that no unionists were employed would not of itself oust the jurisdiction of the Board of Conciliation in a particular dispute.

Mr. Hosking's main contention is, however, that before there can be an industrial dispute within the meaning of the Arbitration Act there must be a condition approximating to an industrial warfare, and which may result in a strike. He says that the use of the term "dispute" denotes strife. He has suggested that the Legislature did not intend to invest the Arbitration Court with jurisdiction to regulate industrial conditions unless there was existing a serious condition of hostility between employers and workers in a particular trade. If this view is correct, then for many years past the Arbitration Court has been exercising powers beyond its jurisdiction, for in many references to it the relations between the employers and workers were very far removed from anything which could be properly termed industrial warfare. But, although the genesis of the Industrial Conciliation and Arbitration Acts was the desire to devise some means to prevent strikes and the evils resulting therefrom, the jurisdiction of the tribunals set up under these Acts is very much wider than was suggested by Mr. Hosking. The Legislature has provided a means by which any dispute between competent parties concerning the conditions of employment in any industry may be defined and regulated—first by the process of Conciliation before the Board of Conciliation, and, failing this, by the process of compulsory arbitration by the Court of Arbitration. The only condition precedent to the application of these processes is that there must be a "dispute," and this term used in the statute has a very much wider meaning than that contended for by Mr. Hosking, and is not limited to a dispute having as one of its essentials the condition of actual or probable strife. In order to found the jurisdiction contained in the statute, it is, in my opinion, only necessary that there should be a **difference** concerning the conditions of employment between a trade union or an industrial union or industrial association, through whom only the workers can voice their proposals, and the employers in a particular industry. It is not necessary that that difference should have arrived at an acute stage. And whether there is such a difference or dispute is a question of fact, and this Court has no concern with the merits or extent of the difference or dispute. That is a matter for the tribunals to which the Legislature has intrusted the settlement of the dispute.

Now what are the undisputed facts in the present case? In August, 1905, a branch of the defendant union was formed at Bannockburn. The promoters of the branch do not appear to have been in the service of the company at the time the branch was formed, but a number of men who were then, and who still appear to be, in the service of the company joined the branch, and were members of the union at the commencement of and during the period covered by the correspondence between the secretary of the union and the company's officers, and this correspondence was with the knowledge and at the instance of the Bannockburn branch of the union. In this respect also the present case is distinguishable from the Pelaw Main Colliery case. On the 28th October, 1905, the Secretary of the Bannockburn branch of the defendant union forwarded to the Secretary of the defendant union a document called a "reference," which contains conditions of employment which the Bannockburn branch desired to be adopted by the plaintiff company in

its mines. These conditions were in reference to balloting for places, hewing-rates, trucking, deficient and wet places, shift wages, hours of work, tools, and preference. The defendant union, through its executive, approved of these conditions, and its secretary forwarded a copy to the company's mine-manager on the 15th December, 1905, with a letter stating, "My committee would be pleased to enter into an industrial agreement upon the lines as laid down in the reference." On the 29th December the company's mine-manager wrote to the secretary of the defendant union stating that he had referred the matter to the general manager of the company "who will no doubt discuss the matter with you, and to whom I have to refer to in this matter." No further correspondence passed between the company's officers and the secretary of the defendant union until the 2nd March, 1906. In the interval the secretary of the branch union wrote to the secretary of the defendant union intimating that the members were getting impatient at the delay which had taken place. On the 2nd March the secretary of the defendant wrote to the company's mine-manager requesting a reply to the "reference," and intimated that if the reply was unsatisfactory the union intended to refer the dispute to the Board of Conciliation for settlement. The mine-manager wrote in answer to this letter on the 6th March, 1906, stating that he had forwarded the letter of the 2nd March to the general manager. On the 12th March the secretary of the defendant union wrote to the general manager requesting a reply by the end of the week. On the 15th March the general manager wrote to the secretary of the defendant union a letter, in which he said, "I am directed to say that the company cannot see its way to enter into the agreement you desire."

This correspondence shows (1) dissatisfaction among the workers in the plaintiff company's mines with the conditions prevailing in October, 1905; (2) the adoption by the defendant union of proposed conditions of employment which the branch union, the dissatisfied workers being members, desired to see introduced; (3) the forwarding by the defendant union to the plaintiff company of these proposed conditions; and (4) the refusal of the plaintiff company to agree to them. There was, therefore, a demand by the union for a higher rate of remuneration and more advantageous conditions than those existing in the plaintiff company's mines, a demand which was made at the instance of members of the union working in the plaintiff company's mines; the communication of the demand to the plaintiff company; sufficient time given to the plaintiff company to consider the demand; and a refusal by the plaintiff company to agree to the proposals. Clearly, therefore, there was a dispute or difference between the union and the company in reference to the industrial conditions prevailing in the mines, and, although it may be that there are no indications that the dispute, if unsettled, is likely to result in a strike, it cannot, in my opinion, be said that it is not an industrial dispute within the meaning of the Act.

The Court has, as I have said, nothing to do with the merits of the dispute. The parties have not adjusted the differences; conditions have been proposed by one side and rejected by the other. The opportunity for adjusting them before the Board exists. If that fails, then the merits of the dispute will be determined by the Court of Arbitration and that Court has ample power, if the employers can establish that the dispute is frivolous or trivial, to dismiss the reference and condemn the union in costs. On the other hand, if the union can establish that the prevailing conditions ought to be improved and that the dispute is a meritorious one, they will in due course obtain an award. In my opinion, therefore, the Board of Conciliation has jurisdiction to hear the reference, and this motion for prohibition must be dismissed and there must be judgment for the defendants.

It will be observed that concerning the question as to who are the parties entitled to bring an industrial dispute before the Arbitration Court, the New Zealand law differs from that of New South Wales. Clause 105 of the New Zealand Act states that the jurisdiction of the Board or Court to deal with an industrial dispute shall not be affected by reason merely that no member of the union is employed by any party to the dispute, or is personally concerned in the dispute. But the main argument adduced in the above case in support of the contention that the Conciliation Board has no jurisdiction was that there was no industrial dispute within the meaning of the Act. Mr. Justice Cooper's interpretation of the Act is that the term "dispute" is not "limited to a dispute having as one of its essentials the condition of actual or probable strife. . . It is . . . only necessary that there should be a difference concerning the conditions of employment" between the parties. This is certainly the interpretation the Conciliation Board and Arbitration Court have put upon the term "dispute" since the Act came into operation, but I think, it may be safely assumed that such an interpretation was never anticipated by the framer and supporters of the original measure. There is nothing, so far as I have been able to discover, in the speeches of Mr. Reeves, or in those of others, in Parliament, to suggest that the Act would ever be invoked except for the settlement of such disputes as would, failing an agreement between the parties, have most probably led to strikes. Mr. J. Macgregor, barrister-at-law, who, as a member of the Legislative Council, helped Mr. Reeves to get the measure passed into law, is very emphatic on this point. In his pamphlet, "Industrial Arbitration in New Zealand" (page 6), he says:—"Obviously then, the object of the Legislature in passing the Act, and of Mr. Reeves in drafting and introducing it was to provide means by which *strikes and lock-outs and disputes likely to result in such might be prevented or settled.* In order to see how completely the measure has been diverted from its real purpose, we have only to refer to Mr. Reeves's speeches in Hansard. In volume 77, at page 30, we read:—'This House is only asked by public opinion to legislate to prevent that class of labour disputes which cause loss or danger inasmuch as they may arrest the processes of industry.' One wonders what he would have said if anyone had suggested that, instead of being brought into requisition in such disputes as he describes, the Act would be plied daily for the purpose of creating disputes?"

I think it will be obvious that if the principles laid down by the Australian High Court, as to what constitutes an industrial dispute, are correct, then, either Mr. Justice Cooper's opinion on that question must be wrong, or he must be supported in his opinion by some provision contained in the law of New Zealand which does not exist in that of New South Wales. But, so far as I have been able to discover, there is nothing, either expressed or implied, in the New Zealand Act, which would account for the interpretation put on the meaning of "dispute" by Mr. Justice Cooper being different from that of the Australian Court. As will be seen below the meaning given of "industrial dispute" in the Arbitration Acts of both countries is practically the same:—

NEW ZEALAND ACT, (Clause 2)—	NEW SOUTH WALES ACT (Clause 2)—
"Industrial dispute" means any dispute arising between one or more employers or industrial unions or associations of employers and one or more industrial unions or associations of workers in relation to industrial matters.	"Industrial dispute" means dispute in relation to industrial matters arising between an employer or industrial union of employers on the one part, and an industrial union of employees or trade-union or branch on the other part, and includes any dispute arising out of an industrial agreement.

It may be noted, too, that Mr. Justice Cooper, has not referred to any provision in the New Zealand Act which differs from the New South Wales Act when dealing with the point in question. His opinion appears to be founded solely on the meaning given to the term "dispute" in the statute, and is briefly this: That the Legislature having provided a means by which any industrial dispute between competent parties may be defined and regulated, it is only necessary that there should be *a difference* between such parties as to the conditions of employment.

Now, what does the Federal High Court say with regard to the definition of a dispute as quoted from the Arbitration Act? It says: "Unless there is an industrial dispute a matter cannot be referred to the Arbitration Court. What follows from that? It follows that an industrial dispute between an employer and employees cannot be referred to the Arbitration Court except by an industrial union, except possibly under other powers

contained in the section. . . But does it follow that any claim that an industrial union may make *in the abstract* is an industrial dispute? Before there can be an industrial dispute it is a truism to say there must be a dispute, and it must be a dispute relating to industrial matters. Industrial matters are matters relating to the terms and conditions of employment between employer and employee in an industry. So that until employer and employees differ as to the terms and conditions of employment, there is no industrial dispute. Otherwise there is nothing to settle."

The Federal High Court, as we have seen, points out that an industrial union, as a *collective body,* has no individual relation with the employer, and that until employer and employees differ as to the terms and conditions of employment, there is no industrial dispute. "Otherwise," the Court remarks, "there is nothing to settle." We have also seen from the explanation given by the President of the Arbitration Court, that the unions would have to discontinue the practice of originating disputes, and would have to wait until some of their members found themselves in dispute with their employers before they could make any reference to the Court.

If a judgment similar to this were obtained in New Zealand, it would result in the Conciliation and Arbitration Act being seldom called into requisition, because all, or nearly all, the disputes hitherto dealt with under the Act have been originated solely by the unions. It may be doubted, however, whether any further action will be taken to have the question as to what is an industrial dispute within the meaning of the Act tested. Even supposing that the higher tribunals, including the Privy Council, decided that the judgment given in Australia was applicable to New Zealand, there would be nothing to prevent the New Zealand Legislature amending the Arbitration Act so as to make it agree with the interpretation given by Mr. Justice Cooper.

I think it may be assumed that the judgment of the Australian Court is such as would, in all probability, have been given by the best English authorities. What will, I feel sure, occur to the lay mind is that the decision is based on sound reason.

When between 7,000 and 8,000 farmers and sheepowners in Canterbury were brought before the Arbitration Court by the Canterbury Agricultural and Pastoral Labourers' Union, in August, 1907, it was argued, among other things, that, so far as the farmers were concerned, there was no dispute with the

Labourers' Union. Various decisions were quoted, including those given in Australia and in Otago (New Zealand), already referred to, but the Court, in its judgment, took practically no notice of these, and dealt with other points raised by the farmers in connection with the case. The chief of these points may be explained. When the Labourers' Union sent out its scale of wages and conditions of labour, it did not supply a copy to each individual farmer, and ask for a conference, or for compliance with the demands. It communicated with the North Canterbury Executive of the New Zealand Farmers' Union, apparently under the impression that this was quite sufficient for the purpose in view. Had the Farmers' Union been registered under the Act, it could have been made a party to an industrial dispute, but as it was unregistered this could not be done. It was therefore necessary that the Labourers' Union should have opened up negotiations with each individual farmer intended to be brought under an award. If the farmer refused to agree to any or all of the conditions proposed by the Union, then a "dispute" was created within the meaning of the Act, and it was open to the Union to refer such "dispute" to the Conciliation Board or Arbitration Court for settlement. The Farmers' Union, having declined to meet the Labourers' Union with the view of arriving at a settlement, the latter referred the matter to the Court. The Court admitted that at the date (16th November, 1906) the reference was filed there was no industrial dispute between the Labourers' Union and any of the farmers cited, but held that that did not dispose of the matter, because that on the date in question there was an industrial dispute between the Union and the Sheepowners' Union, "which was then a duly registered Union of Employers." An extract from the Court's decision is here given:—

"The evidence shows that on the 13th of June, 1906, the Secretary of the Labourers' Union wrote to the Secretary of the Sheepowners' Union forwarding a copy of the Labourers' Union demands with regard to wages and conditions of labour, and asking the Sheepowners' Union to appoint delegates to meet delegates from the Labourers' Union. The letter and demands were considered by the Committee of the Sheepowners' Union, and under instructions from the Committee, the Secretary wrote to the Secretary of the Labourers' Union, on the 4th July, 1906, to the effect that the demands of the Union as set out in the schedule of wages and conditions were so unreasonable that the Sheepowners' Union could not see their way to appoint delegates

to meet the delegates from the Labourers' Union on the matter. There was thus a refusal by the Sheepowners' Union to agree to or even discuss the proposals made by the Labourers' Union with regard to the wages and conditions of labour of certain classes of workers, and that was clearly sufficient to constitute 'an industrial dispute' within the meaning of the Act, according to the decision of the Supreme Court in the case of the Cromwell and Bannockburn Collieries Company v. Otago Coal-miners' Union (8 G.L.R., 835). The position, therefore, in November, 1906, was that there was an industrial dispute, which it was open to the Labourers' Union to refer to the Conciliation Board for settlement, and the only question is whether it was competent for the Labourers' Union to join in the reference as parties to the dispute a large body of farmers who, up to that time, had had nothing to do with the dispute. It is not clear whether, under the Act of 1905, unions, associations, or employers, who are not parties to the dispute may be joined as parties to the reference. We are inclined to think that under the Act of 1905, although the farmers might have been added as parties by the Board under the powers conferred by section 53 (*c*) and section 111 after the dispute had been referred for settlement, or subsequently by this Court under section 11 (*b*) they could not have been joined as original parties in the reference. Any doubt about the point is removed, however, by the provisions of section 3 of the Amendment Act of 1905, which makes it clear that persons may be cited and bound by the award, although the names of some of them may not even be known to the union. We hold, therefore, that it was competent for the Labourers' Union to join farmers as parties in the reference to the Board of the existing industrial dispute with the Sheepowners' Union."

It may be mentioned that in the citation it was stated that the dispute was one between the Labourers' Union and the "Canterbury Sheepowners' Industrial Union of Employers and all other employers employing farm-workers." As we have seen, the farmers had not been properly made parties to the dispute in the first instance, but the Court held that it was competent for the Union subsequently to join them to the proceedings by making application under section 3 of the Amendment Act of 1905. The Union made the necessary application, which was granted.

CHAPTER VI.

DISPUTES BEFORE THE COURT OF ARBITRATION.

When the Court visits one of the four large cities, the list of cases to be heard includes a number of what Mr. Macgregor (to whom reference has been made in the last chapter) would call "factitious disputes." At the opening of the Court's sitting, there are gathered in the building perhaps about 50 or 60 people, consisting of the employers cited and the officials of the workers' unions and their witnesses. Before the President and the two lay members of the Court put in an appearance, some of those assembled are seated and are taking things quietly. Others, mostly employers, are standing in small groups, discussing the pros and cons of their respective cases. The Court having arrived, numerous questions, generally from employers, are put to the President as to when the various cases will be heard. It may be pointed out here, that although the date of the sitting of the Court is usually announced in the local newspapers about a week or so beforehand, each party may receive only three days' official notice from the Clerk of Awards, and then the date for the hearing of each case is not fixed until the Court sits, when all concerned are expected to attend. A great deal of dissatisfaction is from time to time expressed by the parties, particularly by those from the country, at the inconvenience to which they are subjected, their having to attend the first general sitting of the Court and then being obliged to wait perhaps a week or more before their cases are heard. On this matter the following appeared in an article in the "Christchurch Press" of the 14th June, 1905:—

"There is one. . . small reform we might suggest. It is that when, as on the present occasion, there is a large and varied mass of business to be dealt with by the Court, it should, as far as possible, be mapped out on a definite plan, so as to minimise the inconvenience of the parties concerned. When the Court met last week, a large number of employers were gathered from the city and surrounding district, only to be told that the cases in which they were concerned would be heard on some other day. This must have caused not only inconvenience,

but expense to those who had come in from the country. Moreover, with one or two exceptions, no definite information has been given as to when each case is to come on. The Court, it is true, has promised to give notice later on when the various disputes and other cases will be heard, but we would respectfully suggest that the Court might take into serious consideration the possibility of fixing beforehand the probable order in which the business is to be taken, and the provisional dates on which the cases will be heard."

The Court is evidently able to do but little to mitigate the trouble complained of. This may be because the Court, being a peripatetic body, finds it difficult to fix any dates for hearing cases until it arrives on the spot, and also because it is impossible for the Court to say how long certain cases will last.

It is necessary that employers who consider that they ought not to have been cited by the Union as parties to a dispute should be present when the latter is heard, otherwise they will be bound by whatever award is made.

Let us now suppose that the Court has directed the first dispute to be called. If the workers' union has initiated the case, the Court may be asked by the employers, or their representatives (if such are appointed) to determine whether all the formalities connected with the filing of the dispute have been complied with, or the Court may, of its own motion, require the union to satisfy it on this point. An official of the union then produces the union's minute book to show that a special meeting has been called for the purpose of considering whether the dispute should be referred to the Conciliation Board for settlement, and to show that a resolution deciding to file the reference has been carried by a majority of the members present, and that such resolution has been confirmed by a majority of the votes of the members subsequently taken by ballot. If the union has not taken the proper procedure, the case is dismissed, and another will not be heard until the Court next sits in the district. If, however, everything is found in order, the union's representatives are called upon to open the case. The chief spokesman for the union will most probably make a short introductory speech, and then call a number of workers as witnesses in support of each item contained in the statement of demands. Each witness is sworn in the usual manner, and that portion of his evidence considered relevant to the case is taken down by the President. The lay members of the Court also take notes. If the case relates to a trade in which an award is already in

force, the union will, in all likelihood, bring before the Court witnesses who, owing to their skill and experience, are receiving considerably more than the minimum wage; but if no award has previously been in force, the witnesses selected will be low-paid workers, and also those receiving the highest wages, the idea being to get the Court to raise the minimum wage as high as possible. The employers may cross-examine each witness, and it may happen that an employer may cross-examine one of his own employees. The members of the Court, too, will frequently ask questions. The case for the union being closed, a statement is made on behalf of the employers, and evidence is given. The employers may plead that their businesses cannot stand the increase asked, and they may submit to the Court documentary evidence in support of their statements. The employers may also, as is now often done, prepare a counter-statement of conditions of labour, and ask that it form the award of the Court. The representatives of the union, of course, cross-examine, and an employer may have to answer all sorts of questions put by one of his own employees. At the close of the evidence, the Court is addressed by both sides, and the former intimates that it will issue its award later on.

CHAPTER VII.

THE MINIMUM WAGE.

The minimum wage is one of the most important items in an award of the Court. Piece-work rates still prevail in a few trades, but these are sometimes settled by experts representing both sides. In a number of trades the weekly, daily, or hourly wage has, of late years, taken the place of a log.

Since the Act came into operation, the President of the Court has been changed five times, and it will not, therefore, be a matter of surprise if, in carrying out many of the details of its work, the policy of the Court has not always been the same. Some of the Presidents have indicated the general policy which should guide the Court in making an award, or in refusing to make one. Judge Williams, the first President of the Court, wrote in a letter to "The Times" (London): . . . "The duty of the Court is to pronounce such an award as will enable the particular trade to be carried on, and not to impose such conditions as would make it better for the employer to close his works, or for the workmen to cease working, than to conform to them."

Later Presidents have expressed similar views, and there can be no doubt that the Court has always aimed at carrying out the policy here laid down.

In fixing the minimum wage, the Court is presumably guided to a large extent by the evidence given, but it does not appear to adopt any precise or uniform method. Some of the questions put by the members of the Court to witnesses, however, would appear to show that the minimum wage is, sometimes, at any rate, fixed according to what is reckoned as the average wage ruling in the trade. More care will be required by the Court in fixing the minimum wage for the first time than will be necessary in the case of a trade which has already been working under an award.

The evidence submitted by the workers' unions may relate to the cost of living, house rents, and the nature of the work, whether disagreeable or dangerous. The unions may also ask that the Court should fix as the minimum wage the highest minimum wage ruling in any other district for similar work.

I may here point out that as the cost of living is admittedly higher in Wellington than in any other centre, wages, as a rule, are higher there than elsewhere. In Auckland, on the other hand, owing to the cheapness in the cost of living, the wages are, in most cases, lower than they are in the southern cities. It very frequently happens, therefore, that when the Court is sitting outside of Wellington, the unions do not ask for the wage prevailing in Auckland, but for the one in force in Wellington.

As has already been stated the employers, in their evidence, may submit to the Court that their businesses cannot bear the increase demanded by the union. This was done when the Tanners' and Fellmongers' Dispute was heard at Christchurch, in May, 1901, and the President of the Court (Mr. Justice Cooper) took occasion to make a deliverance on the question whether information as to the profits made by the manufacturers should not be forthcoming to enable the Court to determine the minimum wage. He said:—

"It is quite clear that a good deal of the information upon which the unions must necessarily rely to base a claim for higher wages is in possession of the other side, and that is the question of the profits you are making on your business. . . I did ask one or two of the employers in another case to produce information for the use of the Court on the understanding that it was not to be made public."

After referring to the opinion which seemed to be held by the Union that the Court not only ought, but had the power to compel the production of books, and after explaining that no books could be ordered to be produced unless on the application of one of the parties, the President continued:—

"The Court must have some data upon which to work, otherwise it cannot tell what profits the manufacturers are making, and whether they are such as to justify a rise in wages."

In reply to questions, His Honour further said that income-tax returns would not be sufficient if the employers' books were asked for, but that the production of a company's balance-sheet would meet the Court's views. Some of the employers submitted that their books would not properly show the profit and loss in their businesses, but the President replied that the union could ask for the production of any other document, and suggested to the union that it should go to a solicitor and have a proper summons taken out for the production of such books as might be reasonably necessary for the Court. In the

course of some further remarks, the President pointed out that although the union could ask the Court to allow its representative to inspect the employers' books, he submitted whether the union should not be satisfied with the Court's inspection only.

This the representative of the union agreed to. Continuing, His Honour said:

We shall consider the union's case as not closed to-day. The Court has no material upon which it can act. . . . Whether the employers can afford to pay higher wages we cannot say.

An employer remarked that his company's balance-sheet would not be able to afford evidence to the Court.

The President: The Clerk of Awards will prepare a subpœna in a sufficiently explicit form to enable the Court to get the information necessary.

The attitude of the President in this matter concerned not only the Canterbury tanners; it concerned all the employers throughout the Colony who might have to appear before the Arbitration Court.

Accordingly, several employers' associations met and protested against the proposal to compel employers to produce their books before the Court, more especially if there was any chance of the parties on the other side being allowed to inspect them. High legal opinion was against the proposal to resist compliance with a summons to produce their books, but any trouble that might have ensued, had the proposal been carried into effect, was saved by Mr. Justice Cooper subsequently intimating first at Dunedin, and afterwards at Christchurch, that he would be satisfied with an inspection of the books at the employers' premises. His Honour also said that it would require a very exceptional set of circumstances to justify the Court in allowing any of the parties to inspect the books, and that the Court, being sworn to secrecy, there would be no danger of the information it obtained being made public.

The President evidently changed his attitude entirely on the subject, as I understand there was no inspection of any kind of the tanners' books. Though the law is clear that the Court has the power to order the production of books, it apparently either thinks it wiser not to exercise that power, or it finds that the ordinary information it obtains at the time the dispute is heard is sufficient to enable it to determine satisfactorily the minimum wage. A number of employers, however, voluntarily furnish the Court with balance-sheets or other documents showing the financial position of their businesses.

The late President of the Court (Mr. Justice Chapman) does not think that the minimum wage should be mainly determined by the profits made by the employers. In giving the Court's reasons for the Dunedin Seamen's Award (1906), he says:—

Evidence was given as to the prosperous condition of the Union Steamship Company, the chief employer in this colony. Such evidence is usually admitted by the Court as part of the general enquiry, but the Court does not settle the wages on a profit-sharing basis, as that might in many industries involve the necessity of fixing a differential rate as between employers, and would certainly lead to confusion.

The views of the President, and the question of the minimum wage generally, have lately engaged the serious attention of Mr. Tregear, the Secretary for Labour. In interviews given to representatives of the two Christchurch morning papers, Mr. Tregear is reported to have said:—

He could not help feeling that it was almost absolutely necessary for some change to take place in the direction of making minimum wages awards more elastic than at present. As far as he knew, Mr. Tregear added, the feeling among the sailors, at any rate, was that the Legislature should give a statutory expression to their desire to have some rules by which a minimum wage might be fixed. They understood, from the previous judgment given by Mr. Justice Cooper in the Waihi case, that the prosperity of a business would have some influence upon the wages of the workers, but from the recent judgment in the sailors' case by Mr. Justice Chapman the workers understood that they had no right to claim a better wage because their employers were prosperous, as the Court did not fix wages on a profit-sharing basis unless such a basis was expressly declared to be the wish of the employers. —("Lyttelton Times," January 9th, 1907.)

I consider that the rise in the price in the necessaries of life needs a reconsideration of the minimum wage in almost every trade. Let me give an example. The bootmakers have a minimum wage of £2 5s. I cannot understand how a bootmaker living in a town like Wellington, where he has to pay from 15s to £1 per week for his house, can possibly provide four or five people—members of his family—with food, clothes, boots, recreation, medicine, &c., on £1 5s, and then exercise the thrift which people in a better position are continually preaching to him.—(Christchurch "Press," January 9th, 1907).

Mr. Tregear again touched on the matter when speaking at a send-off luncheon to the seamen's delegate to the Maritime Conference in London. He referred to the "disappointment recently suffered by two branches of the sea-faring world," and said:—

Without wishing to in any way appear to be blaming the Arbitration Court, he had very great sympathy with the men in one or two directions. He added that there would have to be definite instructions given by the Legislature by which it should be made clear on what basis the minimum wage or any other wage was to be computed. If there was to be no profit-sharing, on what basis was it to be? He had not the slightest doubt that Parliament would soon have the matter

presented to it in a manner which would arouse the greatest interest, and that matter must be made clear.—("Otago Daily Times," January 29th, 1907.)

Once more Mr. Tregear returned to the subject in a speech he delivered at a trades and labour gathering at Wellington, in May, 1907. After stating that Mr. Justice Cooper had, some years previously, favoured the idea of profit-sharing, he said:—

Lately, however, that principle had been altogether laid aside, and Mr. Justice Chapman had recently said that profit-sharing was not spoken of in the statute, and that he could take no consideration of it in regard to fixing the minimum wage. "Let the workers seek for an amendment of the Act so that profit-sharing should be taken into account and form the basis of the minimum wage principle."—(From "Otago Daily Times," 18th May, 1907).

Since the foregoing was written, the new President of the Court (Mr. Justice Sim) has endorsed the views of his predecessor in regard to this question. At a sitting of the Court at Napier, held in June, 1907, the representative of the union in a typographical case asked whether a newspaper proprietor could not be compelled to produce his books to show the profits of his business, so as to base the wages on a profit-sharing principle. The newspaper report says:—

Mr. Justice Sim said that it was ridiculous to expect the Court to take profits into consideration in fixing wages, for if that were done, and in one district one employer lost money and another made large profits, they would have to fix different wages for each, and perhaps they would be asked to average it, which would be unreasonable. The Court would not consider profit-sharing at all.

The union representative said that such an opinion struck at the very base of the Act, and rendered it useless to them.

At Wellington, a few days later, Mr. Justice Sim had again occasion to refer to the question. He said: —

Under such a system the men would have to go without wages if there were no profits. The Court should endeavour to give the men fair remuneration for their work, regardless of whether employers got a profit or not. Profits could only be taken into consideration in extreme cases. There were cases where an increase in wages would wipe out a business.

The employers' representative on the bench remarked that frequently, if the Court gave what the men asked for, the men would in consequence be walking in the streets.

It will be admitted by all those who follow closely the working of the Arbitration Act that the minimum wage, as fixed by the Court, has a varying effect. This may be due to a variety of causes. No doubt the Court gives its award in each case after the most careful consideration of the evidence submitted, but no one, not even he who is loudest in his praises of the Act,

will be disposed to claim for the Court the ability to foresee the effects of its decisions. But there are other very important points to be borne in mind when examining the question of the minimum wage. First of all, I would point out that the union incurs small risk in losing anything by going to Court. Then the evidence given by the union is, in the majority of cases, simple and uniform. It practically resolves itself into something like this: "We want higher wages, because the present wages are too low, and are not so high as in other parts of the Colony; we want shorter hours, because the present hours are too long." Or the union may emphasise the fact that the cost of living has increased. The position of the employer is often quite different. He comes to the Court usually against his will to act on the defensive. He will have only a small chance of gaining anything, and will probably lose something. If he makes a poor defence, or makes no defence at all, he may lose a great deal. Of course, in some cases the Court may, for good reasons, take little notice of the evidence given by either side when making an award, but generally speaking, if the employer fails to look properly after his interests, or handles his case badly when before the Court, he may have burdensome conditions imposed upon him. The employers, as I have said, are on the defensive when they come to the Court; they are called upon to show cause why the conditions demanded by the union should not become binding on them. It must be obvious, therefore, that they should be able to present their case in as capable a manner as possible. Unlike the New South Wales Arbitration Act, the New Zealand Act permits only laymen to appear in disputes unless both sides agree that a lawyer may be employed; but as both sides never agree to counsel appearing, it will be easily understood that the cases must often be very indifferently conducted. In each large centre there are employers who are intelligent and keen business men. They are conversant with the Arbitration Act, and with the procedure of the Court. They prepare their case carefully, and present it in a manner that must command the thoughtful and earnest attention of the Court. They are also able to cross-examine witnesses, and are ever alert to make the most of the points which tell in their favour. These are the employers who stand a good chance of escaping an unfavourable award. But what of many other employers who have not the ability to conduct their case before the Court in a proper manner? It has frequently been stated that the New [redacted]ealand Labour Department concerns itself more with the

interests of the worker than with those of the employer, and that the reason the Department is said to give for this policy is that the employer is well able to look after himself. There are good grounds for believing that the policy of the Department is as has been alleged, that the employer is left to look after his own interests; but, as has often been pointed out, the employer, in many instances, is somewhat behind the workers in the way in which he manages his case before the Court. It is true that since employers' associations were started some years ago, many employers have received valuable assistance from the secretaries of these bodies not only in preparing their cases, but in appearing for them at the Court. There are, however, employers who do not avail themselves of such assistance, and there are many others who are far removed from where employers' associations are. It not infrequently happens, therefore, that while a case is proceeding, the employers will, without having fully considered the matter, give way on some point which may afterwards hit them pretty hard.

When such a concession is made, advantage of it is taken by the unions. They say: "Such and such an award has this in it, and we do not see why we should not have it in our award." And so a point thoughtlessly conceded in one district may in time find its way into many other awards in other parts of the Colony. Employers who take an intelligent interest in the working of the Arbitration Act have been much exercised about their fellow-employers compromising others owing either to gross carelessness, or to inability to understand the full effects of their concession. But it is not merely when a case is before the Court that important points are conceded. It may be done when employers and workers are in conference, unless the former are capable of looking after their interests, or are well-advised. Industrial agreements may also contain concessions which may be inserted in other agreements or awards. The reader may be here reminded that industrial agreements may be made under the Act between employers and workers' unions without reference to either the Board or Arbitration Court, provided that the parties have not previously been working under an award. If they have an award, any agreement subsequently arrived at cannot operate until it has been submitted to the Court, and ratified by it. It then becomes an award of the Court, just as if the Court had drafted every item in it. This part of the system of Arbitration in New Zealand has always struck me as being peculiar. It allows employers and workers

to agree to practically anything they please, no matter how divergent the conditions agreed upon may be from those in force elsewhere. Of course, awards made pursuant to agreements are not numerous, but the terms are not generally arranged without some important concession being made by both sides. "If you give us this," says the union to the employers, "we will give you what you ask for," and *vice versa*. Lengthy conferences sometimes take place before a settlement is arrived at, and thus the real fight between the parties takes place *in camera*, instead of in the open Court.

It will, I think, be thus seen that the factors which determine the minimum wage, as well as other conditions in an award, may be very considerable. In the opinion of many employers and of many workers, a uniform minimum wage ought to prevail in every trade whose products enter into competition throughout the Colony. This has been accomplished in the case of the boot trade, but is mainly if not solely due to the fact that in that trade both employers and workers are formed into colonial federations. In the clothing trade an application was made to the Court in 1903 to have the award in force in Wellington, Christchurch, and Dunedin, extended to Auckland, but without success.

Another attempt was made in May, 1906, to have the Auckland Clothing Manufacturers brought under a new award, which bound the southern centres. It was contended on behalf of the applicants that since the previous application had been made circumstances had altered very considerably in the south. Piecework rates had been abolished, and the cost of producing trousers and vests had been largely increased, and to such an extent that if the Auckland manufacturers were allowed to continue under their present log they would be able to monopolise the trouser and vest trade.

The Auckland manufacturers, who were supported by the workers, vigorously resisted the application. They contended that the girls could earn, under the Auckland log, as good wages as were earned by the southern workers.

Though the case was heard in May, it was not till December, 1906, that the decision of the Court was delivered by Mr. Justice Chapman. The delay in preparing the decision was, as the President explains, due to the want of proper returns which the Court had requested to be furnished with. The full text of the decision was as follows:—

IN THE COURT OF ARBITRATION (NORTHERN DISTRICT, AUCKLAND).

Between the New Zealand Clothing Manufacturers' Association and the New Zealand Federated Tailoresses' and other Clothing-trade Employees' Industrial Union of Workers, applicants, and the Auckland Clothing Manufacturers' Industrial Union of Employers and the Auckland Tailoresses' Industrial Union of Workers, objectors.

DECISION OF COURT DELIVERED BY CHAPMAN, J., PRESIDENT.

This is an application made on notice of motion dated the 15th day of February, 1906, filed the 19th day of February, 1906, supported by both the union and the employers who are parties to and bound by an award made in and for the Wellington, Canterbury, and Otago and Southland districts on the 21st day of December, 1905 (Book of Awards, vol. vi., p. 409). The object of the proceedings was to obtain an order in terms of section 92 of "The Industrial Conciliation and Arbitration Act, 1905," extending that award to the Northern Industrial District. This section provides that the following powers shall be exercisable by the Court during the currency of the award: "(b.) Power to extend the award so as to join and bind as parties hereto any specified trade union, industrial union, industrial association, or employer in New Zealand not then bound thereby or party thereto, but connected with or engaged in the same industry as that to which the award applies." This power is limited by a proviso stating that, "the Court shall not act under this paragraph except where the award relates to a trade or manufacture the products of which enter into competition in any market with those manufactures in another industrial district, and a majority of the employers engaged in and of the unions and workers concerned in the trade or manufacture are bound by the award." The scope of this section was fully considered, and the opinion of the Court thereon was expressed in the judgment of the 22nd December, 1902 (Book of Awards, vol. iii., p. 104). In that case it was decided that the power recited necessarily implied a power to override an industrial agreement entered into and filed by the parties whom it was sought to bind if occasion arose for so doing. It was also decided that the Legislature had not considered the existence of a dispute between the workers and employers to whom the award may be extended, a condition necessary to the exercise of the power.

The effect of the system instituted by the Industrial Conciliation and Arbitration Act generally is that conditions sought by one party may be forced upon the other party against their will, and this may be carried to the extent of forcing upon particular employers and their employees conditions which neither have sought and which are distasteful to both; and this is the more so in the case of an exercise by the Court of the powers recited under which this application is made. It is almost needless to say that the great power thus given to the Court ought to be exercised with caution.

The application was heard upon evidence and argument on the 28th, 29th, and 30th May last, at Auckland.

The contest before this Court was upon the same lines as in the case of the previous application. Substantially it came to this: An award had been made in the three southern districts on the 21st December, 1905, which made a radical alteration in the conditions under which women and girls worked in factories. The Court by that award sought to put an end to the long-standing disagreement which had caused so much friction by abolishing the piecework statement or log, and substituting

a set weekly wage. This wage was fixed at £1 5s for all competent tailoresses. The award also fixed the wages of apprentices and instituted two classes of improvers at graded rates of wage in each branch of the trade. To insure that the fixed wage should not result in the discharge of the slower hands or stand in the way of their taking employment, an under-rate scheme was adopted under which a lower wage might be fixed for any class of employee. This is a feature common to most awards. An important feature of this award was that it provided a means of valuing the weekly wages earned in the past by the piece-workers, so that they should not necessarily be reduced to 25s per week. It provided, as is usual in the Court's awards, a tribunal for fixing an under-rate for the slower workers.

At various times both parties have expressed their approval of the change thus made. Both the employers and the employees considered that it had the effect of raising wages. The Court had in mind the desirability of getting rid of the log as a source of friction, which was increased by the fact that changes in the methods of working and in the style of garments, and the extension of the use of machinery, had a constant tendency to render the log inapplicable to the work in hand.

When this motion came before us it was strenuously supported by manufacturers and unions from the south; it was with equal insistence opposed by both manufacturers and unions in Auckland. There could be no doubt about the earnestness on both sides. While the workers in the south had for years consistently urged upon the Conciliation Board and the Court the desirability of having a set wage, those in the north were equally urgent in insisting that their rights and interests could only be properly conserved by adhering to the industrial agreement under which they earned pieceworkers' wages. Mr. A. Rosser, who appeared for the union, and who is a man of wide experience in industrial matters, left it beyond doubt that not only were the workers strongly adverse to the suggested change, but that they were perfectly satisfied with their present condition as to earnings. Several workers who were called as witnesses emphatically indorsed this statement, and contended that their earnings were higher than those offered by the award—up to 34s, according to one witness. The manufacturers in Auckland were equally emphatic in their assertion that there was not and never had been any difference between them and their employees. Reference was made to the Auckland climate and to the impression that under a set wage girls would be driven to work beyond their strength. As there was evidence of a strong feeling on the part of workers in Auckland that the change effected by the Court's award had proved detrimental to workers in the south, we think it desirable to refer to the discussion on this subject. Some reference was made to certain friction which arose at Dunedin and Christchurch over the abolition of the log, the controversy as to which had been widely circulated by means of Press telegrams referring to an alleged "lock-out." We extract the following as bearing on this:—

Helen Willis (a witness): Have discussed the question of extension of award. Have never found any approval of weekly wages. Never found members of the union dissatisfied. Judge by conversation of girls. Not aware of the effect of the new award in the south. Have heard about the lock-out. I naturally thought the girls in Dunedin were dissatisfied with the new award.

Mr. Hood (representing southern Tailoresses' Union): Not a single reduction has taken place in a girl's wages in consequence of the new award.

Mr. Hercus (Kaiapoi Company): In no case has there been a reduction; in many instances an advance.

Mr. Scott (employers' representative): I confirm Mr. Hood's statement.

Mr. Hood: The effect was that a number of second and third-class tailoresses were raised to the minimum.

Mr. Chipper (Wellington Woollen Company): The same is the case in Wellington. Nobody's wages reduced there. In nearly every instance it has had the effect of raising them.

With reference to the alleged dissatisfaction with the southern award on the occasion of the alleged "lock-out," further observations were made at the close of the case.

Mr. Rosser (Auckland Union representative): Workers desire no change. Relations amicable; good employers; grievances remedied. Not so in the south. Girls are not underpaid or they would complain. In the Auckland climate a girl likes to do as much as she feels able to do.

Mr. Scott: As to the southern award, there is only a difference of opinion as to the minimum fixed. But both employers and employees regard the award as an improvement on the former state of affairs.

Mr. Hood: Mr. Rosser contends that wages are as high as in the south. We are satisfied that the southern award has been beneficial to our workers as compared with the conditions under the abolished log.

It is said that both sides are dissatisfied with this award. I say that is not true. I have never yet heard of a single case of a worker dissatisfied with the award. They were doubtful about abolishing the log at first. Now that they have seen the working of the award they are highly satisfied. In every case where there have been applications for permits there has been an advance of wages. . . . Mr. Rosser should rather say that the employers were dissatisfied.

The main discussion in this case turned on the allegation of the southern employers that the result of the award was to raise the cost of production against them, that the Auckland manufacturers were already competing successfully with them, and that this competition had an ascertainable tendency to drive them out of certain outlying markets, such as New Plymouth, Gisborne, Napier, and Wanganui, and the districts or portions of districts surrounding these places. In order to ascertain what light could be thrown on this question, we called for two classes of returns, one of which was intended to inform the Court as to the commercial aspect of the case with respect to the alleged competition, and the other was intended to inform it as to the wages earned by workers in the respective sections.

There was a long delay in connection with these returns, and a further request for data had to be made. To this long delay is largely attributable the delay in preparing this decision dealing with the motion. In the end, despite its request for fuller information, the Court feels itself obliged to say that the request for returns has not been properly complied with, and that, especially with regard to those required from some of the applicants in the south, there has been shown either inability or disinclination to comply with the order of the Court.

So far as they tend to assist the investigations, the following is a summary of some of the results of the returns sent in. With respect to the wages shown in the returns, we have taken typical cases from the wage-sheets of the different firms and analysed their weekly earnings. They do not in many cases come out at an even wage, and there is, except in the case of one firm, nothing to show whether the wage paid is a weekly wage or for piecework.

The results to such individual workers in four firms may be summarised thus:

A. Only two trouser-finishers come near to the minimum wage of the southern log, and these have been at the trade fifteen years; the others are considerably below the minimum. There are two vest-finishers at 2s and 2s 6d above the minimum wage. There are one coat machinist,

one trouser machinist and one unspecified machinist, at 3s, 1s 6d, and 6d above the minimum; the rest of the fifty-five females employed, exclusive of the forewoman and eight apprentices, are considerably below the southern minimum.

B. Shows a large number of trouser machinists all below the minimum, except one woman over twenty-one years of age, who has only been one year at the trade and is getting £1 2s 6d per week. Trouser-finishers all below the minimum, except one weekly wage hand at £1 5s per week, who is over twenty-one and has been six years at the trade. Coat-finishers all below the minimum, except the forewoman, who is on weekly wages. There are two coat machinists on piecework making the minimum or over; the rest are below the minimum. One coat machinist is at a weekly wage of £1 2s, who has been eight years at the trade.

C. Shows all hands to be below the minimum except the forewoman at £2 per week and one coat hand at £1 7s 6d per week. There is nothing to show whether the workers other than these are pieceworkers or weekly-wage hands.

D. Shows all hands to be considerably below the minimum, except the forewoman, and one presser who has apparently made over £3 per week. One presser shown in this return has worked forty-two weeks at an apparent average of 16s 6d per week. This man is over twenty-one years of age, and has been over two years and a half at the trade. An apprentice over twenty-one years of age is working at coat-finishing for 5s per week.

Summarised, these returns show both pieceworkers and weekly-wage hands to be earning over a given period considerably less than the minimum fixed by the southern award.

We only have returns relating to 267 females in Auckland out of a total of close on four hundred.

We have no exact knowledge as to how many workers in the south are under-rated. Facts which were made public soon after the making of the award seemed to show about a hundred in Christchurch and perhaps half that number in Dunedin. Though the general effect of this evidence is apparently to show a lower rate of wage-earning in Auckland than in the south, more information is required as to the work done than is before the Court before the cost of work can be appraised. We have no data from which an accurate inference can be drawn as to how far the Auckland workers as compared with those in the south work full time. The evidence of some of the witnesses suggests that the hot climate is against this. We naturally have no exact information as to what return is given in the way of output for the work done. All that we have is the significant fact that, though the controversy between the north and the south has now lasted for many years, the northern workers have declined all offers of assistance from the southern union, and have persisted in their desire to stand by the present agreement. We had not before us one instance of a worker who believed that her actual condition would be bettered by a change or who failed to do her best to resist a change. The collective action of the union was equally emphatic, and its desire to keep to present conditions and to have a voluntary agreement rather than submit to an unsought award, and to have piecework rather than universal set wages was repeatedly and emphatically urged upon us by Mr. Rosser, who must be deemed to have very clear grounds, satisfactory to his own mind, for insisting that their resisting this claim is in accordance with both inclination and the interests of the workers.

Then, with respect to the returns dealing with the commercial aspect of the case, a comparative statement of the total business done in the two Islands by ten firms and companies which have joined in this application, in the years 1903 and 1906, appears to result as follows:

Total sales for 1903, £212,880; total sales for 1906, £211,068; decrease, £1812. Very little importance can be attached to this difference as bearing on this question, as in some cases the manufacturers making the returns have stated that they are also importers, and in these cases the sales of manufactured and imported apparel have not been always separated. It must be considered that practically the condition has not altered in the three years.

The returns of the manufacturers in the Northern District, who oppose the making of the order, appear to result as follows: Total sales for 1903, £69,764; total sales for 1906, £75,114; increase, £5350.

The sales effected by the southern manufacturers have been in all New Zealand, including a large amount of business in the Auckland District, while, excepting in the case of one manufacturer, the sale of Auckland manufacturers is confined to the Auckland District. When the details of the sales from the south come to be examined it is found that a single manufacturing company located in the South Island has about maintained its Auckland trade, while in the North Island as a whole it has secured an increase of business amounting to £6860, a larger sum than the whole increase secured by the four northern manufacturers as representing the difference between the trade of 1903 and that of 1906. Judging by the over-all figures, this increase has been secured by successful competition with another manufacturing company whose business in apparel has correspondingly declined. These facts have not a very high value, as a concern may cease to push sales of apparel when it finds some other line more profitable; the fact, however, that one firm may secure an increase to this amount shows that the total increase shown to have been secured by northern manufacturers is, looking at the rapid growth of population, too small to warrant the inference that it is proved to have had a serious effect in displacing southern manufactures.

Deducting one set of figures from another, we find that the total increase in the output in three years amounts to only £3538, or 1¼ per cent., despite the increase in population and general prosperity which has accrued. We cannot help thinking that this shows that imported goods must be advancing as against locally manufactured apparel, a tendency which would almost certainly be increased by increasing the cost of production.

We cannot yet ascertain the operations of importers for the same years, but, taking the returns found in the Official Year-book for the nearest years, we find the following under the heading "Apparel and Slops," a heading which presumably goes beyond woollen garments and includes women's apparel: 1902, £510,231; 1903, £582,184; 1904, £603,006; 1905, £614,859.

An increase of £104,000, or, say, 20 per cent. in three years, is certainly significant. In the same period the population of New Zealand, apart from the Cook Islands, has risen as follows: 1902, 851,072; 1903, 875,648; 1904, 900,682; 1905, 930,913.

These figures show an increase in three years of a little over 9 per cent.

Such facts, though they have a bearing on the state of trade generally and of this trade in particular, do not give much assistance in investigating the matter in hand, especially as there may have been an increase in the use of tailor-made suits. They rather tend to show the difficulties with which the manufacturer has to contend.

Upon these allegations and facts we are asked to make the order sought. Looked at as a claim by the southern tailoresses' union alone, we must consider that the views of the Auckland Tailoresses' Union must be regarded as paramount. That union is the proper guardian of the interests of its members, and its vote is decisively cast in favour

of maintaining present conditioins. Looked at as a claim by the southern manufacturers, the policy of the law is not against our acting on different principles, and we have now to consider whether we should do so. The case presented by the applicants is that they cannot successfully compete with those in the north while a difference in the wages exists. Unless the southern wages have been greatly increased by the last award, that difference must in a great measure have existed for some time. We have not before us evidence of the actual increase, though no doubt there has been some. We cannot assume that it is such as greatly to alter the aspect of matters, as it was the declared object of the Court not to make an increase, though that naturally followed, owing to the difficulty of under-rating all the slower workers and the provision for maintaining the wages of those who earned above the minimum.

On the former occasion (9th May, 1903, Book of Awards, vol. iv., p. 176) the Court found, upon the evidence then presented, that the workers at Auckland could earn under the piecework log substantially the same wages as those in the south. We have not had before us the material on which this conclusion was based, and have no means of comparing it with the imperfect returns we received, but we accept it as a conclusion of fact. The Court in that judgment analysed the effect of the differences in the set wages, with a result which would not wholly apply to the present southern award; the difference, however, is not very great.

We do not, however, know in what way work is distributed between pieceworkers and earners of set wages in Auckland. What we have is a set of returns showing undistinguished returns of piecework and set wages, and practically no means of separating them. It is possible that the customs and habits of the women in the trade are materially different, and that, as was suggested, there is a greater tendency to work broken time in the north than in the south. It cannot be denied that there is competition between the different districts, but that mere fact is not a ground for making the order sought. The southern manufacturers had possession of the northern markets before manufactures were established in the north, and have in a considerable measure kept their hold there, while the northern manufacturers have never succeeded in invading the south to an appreciable extent. It is a significant fact that a witness who has a business at Wellington preferred to have clothing made by contract there rather than ship it from Auckland, though the freight would have been a mere trifle.

With respect to the outlying districts, where there are no local manufacturers mainly in the North Island, the evidence does not show serious displacement of southern goods by northern manufacturers. Until something of this sort is shown, we do not think that the Court ought to interfere. It may be that upon further information a stronger case may be made. There is nothing to prevent the applicants from renewing their application upon better material. So far as the complaint is based on the operation of the award, as to which owing to its having but recently come into force very little evidence could be given in this case, its actual effect upon the cost of production in the south can be shown at a future date. At the same time, a more systematic interrogation of both parties upon their returns may be undertaken by the Court than was possible on this occasion.

Upon the material now before it, the Court must refuse the application.

Dated this 21st day of December, 1906.

FREDK. R. CHAPMAN, J., President.

Chiefly owing to the fact that the cost of living is usually lower in the small towns than it is in the cities, the minimum wage in a few trades is fixed at a rate lower than the one in force in the larger communities. The suburbs of a city, and sometimes small towns near the city, are usually included in the awards prevailing in the latter place, because the trades in all these communities are in competition with one another. In other cases an award is made to cover nearly the whole of an industrial district. The Wellington Furniture Trade and Engine-drivers' Awards, made in March and April, 1906, may be cited as examples. The Wellington industrial district includes not only the Wellington province, but also the province of Hawke's Bay, Napier, the chief town of the latter, being about 200 miles from Wellington. Here are cases where the employees both in the country and in the city receive the same minimum wage, and as the house rents are abnormally high in Wellington, the cabinet-makers and engine-drivers there who receive no more than the wage prescribed by the Court, must live under conditions less favourable than those of the workers in the small towns. It ought to be mentioned, however, that the awards were simply confirmations of agreements arrived at by both parties.

It was reported some time ago that the Labour Department purposed dividing the Wellington Industrial District into two districts, by detaching Hawke's Bay Province. The employers and workers in the city are said to be against the proposal. They are doubtless anxious that the conditions which bind them should apply to as large an area as possible, one of their reasons being that employers in the adjacent districts enter into competition with them. If in the furniture trade, for example, the minimum wage and other conditions were less favourable in the city than in the districts just beyond it, the cost of production in the country would be less. The city employers might even urge that rents are lower and the cost of living generally more favourable in the country than in the town. The employers in the Hawke's Bay Province will doubtless be in favour of the proposal to detach the province from the Wellington district. Naturally they will prefer to be under conditions different from those in that district, and will probably be able to adduce arguments in support of their views. If the Wellington district is split up, as is proposed, it may lead to other industrial districts being similarly dealt with. In that case dissatisfaction on the part of many of the city employers

would follow, and the proposal so often urged that the labour conditions throughout the Colony should be as uniform as possible would have small chance of being carried into effect.

As has been said, the minimum wage has a very varying effect. Where skilled tradesmen are plentiful, which is by no means common in New Zealand, the minimum wage, and even more than that wage, will be paid without the employer feeling any burden, but in those trades where really competent men are difficult to procure, the employer may be at a great disadvantage. The men obtainable may be worth little more than half the prescribed wage, but he has got to pay the full amount unless the men obtain permission either from the workers' union or from the Chairman of the Conciliation Board, to work at lower rates. In those trades in which there is no competition with the outside world, many of the workers, according to their degree of skill, are paid more than the minimum wage fixed by the Court, but in others in which there is competition with the imported article, the practice of making the minimum the maximum wage is, I believe, pretty general. In the latter case the employers contend that they cannot afford to pay to any worker any more than is fixed by law.

The fact is, the minimum wage is usually fixed too high. It is, as has already been pointed out, often based upon the average wage ruling in the particular trade, and becomes, in such a case, the standard wage. The effects of the minimum or standard wage on the New Zealand worker cannot be beneficial. Where all receive the same pay, what inducement is there to individual effort? The worker of ordinary capacity need not trouble himself about becoming a better tradesman. His wage is as high as that of his more skilful co-worker. As for the latter, he may just as well take things quietly. Why should he put through more or better work than the less capable man? Even when a quick worker, actuated by conscientious motives, wishes to produce as much as he can, he is generally prevented from doing so by the slow men. The most serious objection, therefore, to the minimum wage, is this levelling down of the efficient workman, not merely because of its effect on the workman himself, but because of the harmful results it must necessarily have upon the industries by making the cost of production greater than it would be if there were no legal standard wage.

It will no doubt be claimed by those who favour the legal wage that it ensures to the worker better conditions than would be obtainable if the Arbitration Act did not exist. Upon

this point there is considerable difference of opinion among the workers themselves, but I propose to deal at length with this matter in a later chapter.

It will also be urged that the employer benefits by the minimum wage, because any employer who is disposed to cut prices cannot do this so easily as he would be able to do if he could pay as low a rate as he pleased. There can be no doubt that in certain trades the tendency to cut prices is to some extent checked when all the employers pay the same rate of wages. Employers are fully aware of this, and in some cases co-operate with the workers' unions in bringing under an award those who were not made original parties to the award. In most trades, however, competition is pretty keen, and cutting goes on briskly notwithstanding the uniform wage.

The first occasion on which the minimum wage fixed by the Court caused much trouble was when the Auckland Furniture Trade Award was given in February, 1903. The workers had for some years previously been working under an industrial agreement, the wages being 1/1 per hour for cabinet-makers and upholsterers, and 1/½d. per hour for turners and polishers. The Court raised the wages of cabinetmakers, etc., to 1/3 per hour, and those of turners and polishers to 1/2 per hour. The number of men who came within the provisions of the award was between 200 and 300, and of these about 31 were discharged or suspended by different employers as being unable to earn the new minimum wage. Fourteen of the discharged men had been previously working under permits issued under the industrial agreement, and the remaining 17 had been paid the full minimum wage contained in that agreement. It appears to have been understood that the men thrown out of employment would be re-engaged if they obtained permits to work for a wage lower than the rate fixed by the Court, as provided for in the award.

The "lock-out," as the suspension of the men was termed by the newspapers, created a great deal of interest throughout the Colony and elsewhere. It was suggested by some that a crisis in the history of the Act had arrived; that there was a danger of the arbitration system breaking down. When the trouble was at its height, the Secretary for Labour proceeded to Auckland with the view of bringing about a peaceful settlement, but his mission did not meet with success, as he subsequently took proceedings against the employers, who were charged with having committed a breach of the award by

discharging or suspending certain of their employees, their action being termed an evasion of the award. The workers' union also filed a complaint charging the employers with breach of award.

Both complaints were dismissed, and in delivering judgment the President (Mr. Justice Cooper) said:—

> I desire to say that in my opinion the matters giving rise to these applications have been clothed with an importance and with proportions which they do not merit. As they have been treated as raising questions of great public interest, I have considered it necessary to deal with the actual facts at very considerable length, and to set out in my judgment fully the evidence relevant to the issues before the Court. Stripped of imagery and irrelevant matter, the whole matter reduced to its proper proportions amounts to this: that out of a total body of probably 250 to 300 workers affected by the provisions of the award 13 men in one firm and 4 in another have, in the reorganisation and regulation of these companies' businesses, consequent on the coming into operation of an award prescribing material alterations in the terms and conditions of employment, been considered by these companies to be unable to earn the minimum wage prescribed.
>
> I entirely disagree with the suggestion made by the counsel for the applicants that in these proceedings the efficacy of the Industrial Conciliation and Arbitration Act is on its trial, or that an adverse decision to the applicants emasculates the Court's Award and destroys the efficiency of our present system of labour disputes. I entertain no doubt as to the power and jurisdiction of the Court to effectively enforce its awards and to carry out in all matters within its jurisdiction the true intent, meaning, and spirit of the statute. In the present case my decision is based strictly upon the evidence adduced before the Court, and upon which I have formed the opinion that the acts proved to have been done by the defendants do not show any ground for holding that the parties charged have offended against either the spirit or the letter of the Award of the Court or against the "policy" of the Act.

One member of the Court—the workers' representative—dissented from the finding of the Court. He was of opinion that the firms, against whom the complaints were lodged, were guilty of a breach of the award, in concert with the employers' union, by refusing to pay the 1/3 per hour to competent men, by suspending the men, and refusing to employ them unless they got permits to work at the old rates. He also considered that what was done was done for the purpose of injuring the union.

CHAPTER VIII.

THE INCOMPETENT WORKER.

Properly speaking, there is no real minimum wage awarded by the Court of Arbitration. I have already pointed out that what the Court awards as the minimum is, in the majority of cases, made the standard wage. But even if this were not the case, there would still be no absolute minimum because of the provision made in the award for a still lower wage to be paid to men unable to earn the so-called minimum.

The "incompetent clause," or as it has latterly been designated, "under-rate clause," has in its operation often been a source of a great deal of trouble, chiefly owing to the unwillingness on the part of the workers' unions to agree to allow the "incompetent" or "under-rate" men to work for less than the wage prescribed by the Court. It was recognised almost from the commencement of the operation of the Act that in every trade a certain percentage of workers, through sheer incompetence, physical infirmity, old age, or other causes, were unable to earn the minimum wage, and hence a clause was inserted in most awards providing that such men might be paid a lower wage under certain conditions.

The following clause is taken from an award issued in 1899:—

Any journeyman who considers himself not capable of earning the minimum wage may be paid such less wage as shall from time to time be agreed upon in writing between such journeyman and the Chairman and Secretary of the workers' union, and in default of such agreement within twenty-four hours after such journeyman has applied in writing to the Secretary of the union stating his desire that such wage shall be so agreed upon as shall be fixed in writing by the Chairman of the Conciliation Board for the Industrial District upon the application of such journeyman after twenty-four hours' notice in writing to the Secretary of the union, who shall, if desired by him, be heard by such Chairman on such application. Any journeyman whose wage has been fixed may work and may be employed for such less wage for the period of six calendar months until fourteen days' notice in writing shall have been given to him by the Secretary of the union requiring his wage to be again fixed in manner prescribed by this clause.

The clause was slightly varied from time to time, sometimes by agreement between the parties, and occasionally by the Court. Sometimes the wage was to be fixed by agreement between the worker and "the President or Secretary of the Union," or

"between any employer and the Secretary or President of the Union," or "by a Committee consisting of two members of the Employers' Union and two members of the Workers' Union," the Chairman of the Conciliation Board in nearly every case being the final arbiter.

At first it may have been thought a desirable thing to place the granting of permits to work for less than the minimum wage practically in the hands of a workers' union, or one or more of its officials, but the result of the experiment, so far as the incompetent worker himself is concerned, has been far from satisfactory. In a large number of cases throughout the whole of the Colony, the union officials have absolutely refused to agree to allow incompetent workers to work at a wage low enough to enable them to obtain the employment applied for. In a number of cases aged and physically weak men have been similarly treated. Such men, after failing to get a permit from the union, have seldom appealed to the Chairman of the Board, because the latter has usually shown a disinclination to upset the union's decision. Some workmen have gone idle or have sought other employment rather than be at the trouble of begging employment from either the union or from the Chairman of the Board. Some unions have granted permits to men to work at a wage agreeable to the employers, but the policy of others has been to allow hardly anyone to work for less than the rate prescribed by the Court. Even when a permit has been asked by an old or infirm person, the wage fixed by such unions has been such as would not be obtainable. The principal motive for such a policy has been generally understood to be to prevent the proportion of incompetent men from becoming so large as to interfere seriously with the employment of thoroughly competent workers. From the opinions I have heard expressed by many employers, I gather that it really does not pay to employ incompetent men; that, generally speaking, employers do not want such, and that those who prefer inferior labour for the sake of cheapness are exceedingly few in number, and cannot, in the long run, benefit by it. It will be hardly necessary to remark that this will be the opinion of most employers everywhere.

It has always seemed to me difficult to understand why the unions should have ever any hesitation in granting a permit to an old or infirm man or to any young person physically weak, to work at a wage he is at all fit to earn. To my knowledge, employers are often pressed by relatives to employ such persons, and from charitable motives merely, work is offered on condition

that the necessary permit is obtained. In nine cases out of ten, however, the union, if it has any say in the matter, will make it impossible for employment to be obtained. Possibly the unions are of opinion that all classes of workers should be paid the legal minimum wage, or it may be, as has been suggested, that they consider that none but fit men should be employed in the various trades.

In 1903 I made a number of special calls upon several business firms in Christchurch for the purpose of obtaining information as to the operation of the Arbitration Act, and among other things, obtained some particulars regarding the policy of the unions towards the incapable man. I will mention two cases; they may be taken as samples of others which have occurred elsewhere. An old man who had a stroke of paralysis wanted work in the coachbuilding trade. The employer, anxious to give him something to do, offered him 4/- a day. This the man was willing to accept, but the union when applied to would not give a permit for less than 8/- a day, being 2/- less than the prescribed minimum. In this case the man appealed to the Chairman of the Board, who gave him permission to work for 5/- a day, and at this wage he was allowed to start. After a trial however, the employer had to discharge the man for the reason that the rate of pay fixed could not be earned.

The other case is that of a lad who, after his apprenticeship to the painting trade had expired, was not competent to earn the minimum wage because he was physically weak. After a great deal of trouble the union consented to give a permit to the lad to work at 8/- a day. The lad, I was informed, knew he was not worth more than 6/- a day, and the employer anxious to keep him off the street, interviewed the Secretary of the union, with the view of prevailing upon him to give a permit for the amount mentioned. The Secretary agreed to the proposal of the employer, but after the lad had been working a week or two, the union interfered and insisted on the wage being raised to 8/- a day. The result was that the lad was discharged.

It was owing to the persistent refusal of many of the unions to grant permits to the incompetent man that the Arbitration Court drafted a new clause allowing applications for permits to be made direct to the Chairman of the Board, or to a Stipendiary Magistrate in places where no such Chairman resided. The clause first appeared in the Nelson Carpenters' award, dated 17th December, 1904, and is as follows:—

Under-rate Men.

(a.) Any worker who considers himself incapable of earning the minimum wage in paragraph 2 hereof may be paid such lower wage as may from time to time be fixed on the application of the employee, by the Chairman of the Conciliation Board, or by such other person as the Court may appoint for that purpose, having regard in so fixing such wage to the worker's capability, his past earnings, and such other circumstances as such Chairman or person may think fit to consider, and upon granting such a permit the Chairman or other person shall forward notice thereof to the Inspector of Factories.

(b.) Whenever occasion arises for so fixing an employee's wage it shall be fixed for such period not exceeding six months as such Chairman or other person shall determine, and after the expiration of the said period until fourteen days' notice shall have been given to him by the Secretary of the union requiring him to have his wages again fixed in manner prescribed by this clause. Provided that, in the case of any person whose wage is so fixed, by reason of old age or permanent disability, it may be fixed for such longer period as such Chairman or other person shall think fit.

(c.) It shall, notwithstanding the foregoing, be competent for an employee to agree with the President or Secretary of the Union upon such wage without having the same so fixed.

(d.) It shall be the duty of the union to give notice to the Inspector of Factories of every agreement made with an employee pursuant hereto.

(e.) It shall be the duty of every employer before employing a man at such lower wage to examine the permit or agreement by which his wage is fixed.

The Court thought it ought to give its reasons for making such a new departure, and accordingly the following was appended to the award:—

In this and other cases the Court has felt considerable difficulty as to the minimum wage, and more especially as to the wages of men who were formerly called "incompetent men," whom the Court now designates "under-rate men." In Nelson a fully competent carpenter is undoubtedly worth the minimum wage of 1s 3d per hour, but it is found that by far the greater number are receiving less, and we are satisfied that this is because many of them are not capable of earning the minimum wage for competent men. The class of work in Nelson is not such as to create a large demand for first-class tradesmen. The Court has met with constant difficulties in dealing with under-rate men and their employers, and has in this instance re-drawn the under-rate clause. It is not intended by this clause to depart from the standard of rights and duties of parties, or alter the duties of the Chairman of the Board or other appointee of the Court as established in numerous awards, but it is thought that the new clause will be better understood and will prove more workable than those heretofore in use, for the following reasons:—

(a.) The expression "worker" is used in place of "journeyman" or "tradesman," because in dealing with applications for permits too narrow a construction has at times been placed upon these expressions, and permits to work for a lower wage have been refused because the applicant was not a journeyman who had become slow through age or infirmity, but was a man who had never thoroughly learned his trade. While the Court has itself recognised that such men are journeymen, though imperfectly trained journeymen, it has thought it best so to word

the clause as to leave it clearly open to the Chairman or other appointee of the Court to hold such persons to be within the intention of the award.

(b.) The clause now gives some guidance to the Chairman to aid him in his inquiry by pointing out that he may have regard to the applicant's capability, his past earnings, and such other circumstances as such Chairman thinks fit to consider. The Chairman ought not to rely on any hard-and-fast rule either as to the kind of incapacity with which he has to deal, or to measure of the reduction of wage at which he allows the worker to work. He should bear in mind that he is appointed as an independent tribunal to take into consideration such circumstances as he thinks ought to guide him, and to use his own independent judgment in settling the wage in each individual case.

(c.) It will be observed that the way in which the clause is now framed removes a source of confusion by showing more clearly than formerly that it is not the union which grants the permit, but the Chairman or other independent person appointed by the Court. This is important, because we have found in practice that men in many cases approached the union, and having met with a refusal have not pursued the matter further by appealing to the Chairman. The essential feature of the present clause is that the workman shall go directly to the Chairman, while power is given to come to an agreement with the union officials which shall render this unnecessary.

(d.) The other provisions of the clause make it easy for the union, the employer, or the Inspector to know what men have received permits or have made agreements.

(e) The Court now makes a practice of reserving power to appoint a person to perform this duty, as the Chairman may not reside near the spot where it was to be performed, and it has consequently been found desirable to ask Stipendiary Magistrates and others to undertake it.

(f.) It is open to the Chairman, in cases of difficulty, to apply in writing or by telegraph to the Court for advice.

In pointing out to the Chairman of the Board that he is appointed as "an independent tribunal," the Court was probably aware of the fact that there had frequently been a reluctance on the part of the Chairman, when appealed to, to grant a permit to work for less than the wage decided upon by the union. The Court, it will also be noted, makes it clear "that it is not the union which grants the permit, but the Chairman or other independent person."

The clause gave great dissatisfaction to the unionists. The Otago Trades and Labour Council, in a lengthy statement published in the newspapers, characterised the clause as " so utterly unfair, unreasonable, and one-sided, and strikes such a serious blow at some of the fundamental principles on which our arbitration system is based, that we are compelled, both in the interests of the workers and of the general public, to make the strongest possible protest against the innovation, and to urge the Trades Councils throughout the Colony to join us in an effort to secure parliamentary action in the matter." The

Council complained that so far as the granting of permits to "alleged incompetent men" was concerned, the union was for all practical purposes "absolutely and deliberately ignored"; that no expert evidence was deemed to be necessary, the Chairman of the Board having the whole matter in his own hands; that if an employer wished to evade payment of the prescribed minimum all he had to do was to make applicants for employment apply for a permit to work at a reduced rate, and that thus any number of under-rate men might be taken on whereby the whole principle of the minimum would be undermined.

The Council considered that probably the most serious blot in the clause was the substitution of the word "worker" for the word "journeyman," as, in its opinion, it meant making it possible "for all sorts and conditions of men to gain an entrance to a trade by way of the permit," and meant "enabling the unscrupulous employer to undercut the honest one, and injure the public by employing unlimited, cheap, unskilled labour in place of qualified journeymen." The Court was accused of becoming an agency for demoralising the trades and undermining the very Act it was called upon to administer, and that its action was "only the culminating point in a long series of unsatisfactory decisions and awards of the present Court." The Council went so far as to say that the attitude of the President (Mr. Justice Chapman) had been in the direction of converting the Arbitration Court into a purely Law Court, and that the decisions had been in almost every case in favour of a particular side. The Council thus concluded:—

> The inevitable result has been to greatly weaken the workers' confidence in the Court, and to drive them to talk of adopting other methods of securing justice. We believe that every friend of industrial peace in the community would deplore even the remote possibility of a return to old-time brutal methods of settling disputes, and we feel some confidence, therefore, that our appeal to Parliament to redress existing evils will not be made in vain.

The Hon. J. Rigg, a member of the Legislative Council, and an ex-President of the Wellington Trades and Labour Council, criticised, in an interview with a reporter, the clause from the point of view of the Trade Unions. He said that the principal feature of the change was that "hitherto it had been insisted that a man should be properly qualified before he could join a union or work at a trade; it was now possible for a person who had never seriously studied a trade or engaged in it to make an application for his wages to be fixed for that specific trade as an under-rate man, and therefore to compete unfairly in the

labour market with those who had served a proper apprenticeship and had qualified themselves as skilled workmen. This struck a vital principle of trade unionism, which was that before a man could become a member of a union he must be properly qualified to do the same work as those forming the union." He also held that the new clause "struck at that spirit of altruism which he regarded as the finest feature of unionism. That spirit induced the highly qualified workman to put himself on the level of the less capable man in regard to wages, in order that he may lift the less qualified man up to his own standard as regards the rate of pay."

Mr. Rigg evidently does not believe in payment according to merit. He would have all the journeymen in a trade paid alike, no matter how greatly they may vary in their earning capacity. Neither Mr. Rigg nor anyone of his cult has explained how an employer can run his business successfully and pay non-efficients the same rate of pay as that given to efficients.

The Otago Trades and Labour Council was taken to task by some journals for the attitude it had taken up in the matter, and, in a reply to one of its critics, said that what the Council chiefly contended for was that before a permit was granted by the Chairman of the Board the union particularly affected should be afforded an opportunity of being heard. The Council emphasised its complaint against the Court. It said:—"We speak with a full sense of our responsibility and in sober earnest when we deliberately repeat that, so far as the workers are concerned, all confidence in the Court is being destroyed, and that that result has been brought about by the nature of the decisions that have been given under the present regime."

About a month or two after the agitation against the clause had begun, a deputation from the Trades Councils' Conference waited on the late Premier, Mr. Seddon, and urged that the issue of permits needed checking so as to prevent flooding a trade with underpaid men who had not served a proper apprenticeship. The Premier agreed that this power would require to be very carefully safeguarded, and the logical conclusion would be for all permits to be granted by the union.

The outcry against the new clause ultimately subsided, but in the Parliamentary Session of the same year (1905), the views of the unionists, so far as regards their claim that the union interested should be afforded an opportunity of being heard when an application for a permit is made, were given effect to by an amendment to the Act. In a fair proportion of cases,

of course, both employers and workers agree to have the old clauses inserted in awards. In some cases the new clause is not objected to by either side; in others the Court inserts this clause if asked by one of the parties.

At the beginning of 1906, considerable trouble arose out of the fact that a large number of tailoresses were requested to apply for permits to work below the minimum wage fixed by the Court in the New Zealand Federated Tailoresses' Award. The award, which applied to the Wellington, Canterbury, and Otago and Southland districts, and was ordered to come into operation on the 1st January, dispensed with piece-work rates, and, instead, fixed a minimum weekly wage. The Court directed that "the minimum weekly wage to be paid to any female worker hitherto working on piece-work, shall be the nearest wage to her average full-time earnings during the last six months or periods amounting to six months or such less period as she shall have worked for her present employer." The Court also provided that, in case of dissatisfaction with the wage offered by the employer, the worker might apply to the Chairman of the Board to have her wage "computed and fixed." According to a statement made by the Dunedin Tailoresses' Union, over one hundred tailoresses were ordered by their employers to make application to be under-rated or be discharged, the employers, presumably, being of opinion that these hands were unable to earn the minimum wage of 25/- per week. About fifty of the workers, it was further stated, refused to apply for permits, as they considered themselves fully competent journeywomen, and were accordingly refused work at the full wage, or, in the words of the Union, "were locked out." The Union gave vent to a good deal of feeling over the matter, alleging that the action of some of the manufacturers was an attempt "to wreck the award and starve a number of women into subjection." In Christchurch a considerable number of permits were issued with little trouble, and this led the Dunedin Union to remark that the young women in the northern city were being "led as sheep to the slaughter." I believe that the greatest care was exercised in the granting of permits, although it is probable that in some cases dissatisfaction was given to either the one side or to the other. The Labour Department, after making enquiry into the trouble at Dunedin, found that no lock-out had taken place, and the girls who had declined to be classed as under-rate workers ultimately found work with other employers, either in the southern city or in other towns.

CHAPTER IX.

BREACHES OF AWARDS.

Not the least important part of the work of the Arbitration Court is that which relates to the enforcement of awards and industrial agreements. During the first few years of the operation of the Act, there were comparatively few cases of enforcement, but in 1902 there was a marked increase, there being in that year 66, while for the year ending 31st March, 1905, they rose to 389.

Tables showing number of cases of breaches of awards brought against employers and workers, and how disposed of, from 1901 to 31st March, 1906:—

EMPLOYERS.

Year.	Number of Cases.	Convicted.	Dismissed or Withdrawn.	Decisions Reserved.
1901	19	14	5	...
1902	63	52	11	...
1903	74	57	17	...
1904	57	48	9	...
1905	360	264	96	...
1906	209	159	46	4

WORKERS.

Year.	Number of Cases.	Convicted.	Dismissed or Withdrawn.	Decisions Reserved.
1901	...	...	...	...
1902	3	2	1	...
1903	1	1	...	...
1904	...	...	...	...
1905	29	21	8	...
1906	72	58	14	...

The Inspectors, I believe, exercise the powers conferred upon them only when cases of alleged breaches are reported to them. If it is reported that an employer is not paying the wages prescribed by the award, the Inspector may call upon such employer to produce his wages-book, and if, after investigation, it appears to the Inspector that the award is not being observed, the case is reported to the Labour Department, with the Inspector's opinion as to whether action should be taken against the alleged offender. The Labour Department then instructs the Inspector in the matter. In some cases, there is little doubt, the Labour Department takes a different view from that submitted by the Inspector. Cases in which some nice legal points may be involved often arise, and the Department, in such cases, must be guided by the opinion of its legal advisers.

It appears that the workers report cases to the Inspector when there is no real cause for complaint. The Christchurch Inspector, in his report to the Labour Department, dated April 10th, 1905, says:—"A very large number of alleged breaches have been investigated by myself and my assistants . . . which, upon investigation, turned out to be no offence at all."

The breaches of awards employers are charged with embrace the following:—Paying less than the award rates, failing to indenture apprentices, employing a larger proportion of apprentices to journeymen than is allowed in the award, dismissing workers because they are unionists, and employing non-unionists when unionists are available.

The awards in operation throughout the Colony vary considerably. Some, for example, may require that preference of employment be given to unionists, that apprentices be indentured for a specified term, and that the proportion of apprentices to journeymen must not exceed a certain number. Other awards, on the other hand, may have none of these provisions, and under such circumstances the employers will be hardly so liable to commit breaches. With the approval of the Department, the Inspectors settle a considerable number of breaches out of Court. Employers who have been paying less than the minimum wage, or who have failed to pay the overtime rate, are sometimes given an opportunity of paying the sums due through the Inspector.

The following extracts from the Annual Reports of the Secretary for Labour, for the years following the passing of the 1903 Act, may be given. Each report, I ought to state, is for the year ending 31st March:—

Report, 1904—

The Inspectors of Awards have had their hands full in some districts. One Inspector recovered over £300 of back wages for workers, in addition to fines and costs of witnesses. The result of appointing Inspectors fully justifies such appointment, as the operatives have been greatly benefited and protected, not only by the cases actually taken to the Court, but by the existence of officers whose duty it is to see that the law is not evaded or abrogated. The Amending Act of last year has been of great service in allowing the examination of the wages-books, &c., as, formerly, even when it was known by documentary evidence to an Inspector of Factories that the award wages were not being paid, he was powerless to use that knowledge for the purpose of the Arbitration Act, while now as an Inspector of Awards he can do so.

Report, 1905—

There is reason for congratulation in noting the results which have followed the appointment of Inspectors of Awards. Not only have officials of industrial unions been relieved of the very invidious duty of becoming prominent in actions against employers, but, as Inspectors grow more acquainted with general conditions and particular awards within their districts, their efficiency is increased, and the benefits accruing to workers are considerably more weighty. I may cite, as an example of this, that during the year they laid informations for 295 cases of breach of award, out of which they won 232. They also settled 312 cases without having recourse to the Arbitration Court, and in these cases were enabled to obtain £1463 8s 4d of back wages for the workers. This was considerably more than the back wages obtained in the cases brought before the Court—in the latter the fines inflicted were £529 10s, and back wages £450. Of course, it must be remembered that the Court had to adjudicate on the doubtful and difficult cases; where the employer had only been guilty of inadvertence the undisputed amount was more easily obtained through the action of the Inspector. Nevertheless, the value of the Inspector's services in saving the time of the Court and preventing needless friction is at once apparent.

Report, 1906—

The amount of back wages obtained during the year for workers by the Inspectors of Awards without recourse to Court proceedings was £1153 19s 1d. . . . This money is accepted by the Inspector when he is satisfied that default has been made unintentionally, and through want of knowledge.

The Inspector, in being allowed to settle breaches "without having recourse to the Arbitration Court," exercises a power of no ordinary importance. The Secretary for Labour tells us that "where the employer had been guilty of inadvertence, the undisputed amount was more easily obtained through the action of the Inspector." This sounds very well, but one would like to know how it is possible for an Inspector to tell, with anything like certainty, except perhaps in a few cases, when an employer commits an intentional or an unintentional breach. Does an employer ever inform the Inspector that he has deliberately broken the award? The Secretary also says that payment of back wages is accepted by the Inspector when he is satisfied

that default has been unintentionally made and "through want of knowledge." In what way, it may be asked, does the employer satisfy the Inspector that he has acted inadvertently? It would be interesting to know this, because, to my knowledge a considerable number of employers who have informed the Inspector that they have acted through ignorance in not paying the proper wage have been brought before the Court and fined. The President of the Court, too, has, in many cases, after hearing evidence expressed the opinion that the employers have acted either through ignorance or negligence. It is a matter of common knowledge that the majority of the cases (relating to the under payment of workers) brought by the Inspector, are neither doubtful nor difficult, the question of the proper rate of pay being usually "undisputed." While, therefore, it is true that the Court adjudicates "on the doubtful and difficult cases," it must be pointed out that these form only a very small proportion of the total number of under-payment cases lodged by the Inspector.

Sometime ago an Inspector sued a public body for paying less than the award rate without previously communicating in any way with the latter on the matter. The body in question had been in existence for only about fifteen months, and the man in charge of the particular work for which the wrong wages had been paid was a recent arrival from Australia. In this case the Inspectors did not take the trouble to ascertain whether the breach was an intentional or an unintentional one.

The settling of cases by the Inspectors is said to prevent "needless friction." I am not aware that much trouble has ever arisen when the Inspector has taken action in respect to clear cases of breaches of award, but I have from time to time heard of considerable friction occurring when the Inspector has, while calling upon employers, made charges against them which he was not prepared to prove. Trouble has also arisen when the manner of the Inspector has been somewhat dictatorial.

It has always seemed to me that the letting-off of some employers for certain breaches and the dragging of others before the Court for similar breaches is a practice which is open to objection. All employers should, I think, be treated alike by the Inspectors. The Presidents of the Court have repeatedly impressed upon employers that breaches of all kinds, whether committed knowingly or through ignorance, are inexcusable, and only under exceptional circumstances has the Court inflicted nominal penalties. The Arbitration Court, of course,

like any other legal tribunal, is bound to enforce the law, and it will probably appear peculiar to anyone unfamiliar with the administration of the New Zealand Arbitration Act that while some employers are brought before the Court and dealt with according to the strict reading of the law, others are simply required to pay any back wages due.

An Inspector appears to be sometimes in very great doubt as to whether an employer has committed a breach or not. He has been known to call upon an employer and make a charge of breaking the award, but after the employer has protested that no breach has been committed, he has ceased to take any further action. He has, in some cases, demanded payment for arrears of wages, and upon being met with a refusal, has done nothing to justify his charge. I may mention one particular case of this description which came under my notice some time ago. An employer engaged in a small way of business was called upon by an Inspector, who told him that he was paying one of his employees less than the rate prescribed by an award of the Court, and that he had better pay back wages, which were said to amount to £10. The employer had some doubts as to whether he was a party to the award that he was alleged to have broken, but rather than get into trouble he offered his employee £5. This the employee refused to accept, he having been previously advised by the Inspector that he was entitled to £10. The employer then called upon me. I informed him that I did not believe he was bound by any award; and that he ought not to pay one farthing of back wages, and that he should inform both the Inspector and his employee to take whatever action they chose. The advice given was acted upon, and the employer heard nothing further about the matter.

As might be expected of a tribunal entrusted with the administration of an Act of Parliament, the Arbitration Court has shown no inclination to temporize in any case of breach of award brought before it. If a clear breach is established, some fine is inflicted; it matters not though the employer may have broken the law through sheer ignorance, through neglect on the part of himself or of some foreman, or through some misreading of the award by which he is bound.

The Court, too, declines to show any consideration for an employer who, in order to give a man an opportunity of earning a living, ignores the strict letter of the award. Numerous cases could be cited to bear out this statement, but I will only mention two typical ones. At Nelson, an employer was charged with

employing a man as a carter who was a non-unionist, the award requiring that preference should be given to members of the union. The employer explained that the man he had employed was starving, and he had given him a couple of days' work at full wages as an act of charity. The President of the Court said that charity was no excuse for a breach of award, and fined the employer £2 and costs. In the other case, a Christchurch timber-merchant and sawmiller paid very dearly for his philanthropy. A woman made more than one anxious appeal to the wife of the timber-merchant to request the latter to give her son, a youth, some employment. There was considerable hesitancy about giving work of any kind to the youth, who was physically weak, and was worth only a small wage. Willing, however, to give the lad an opportunity of earning something, the timber-merchant engaged him to drive a horse, yoked to a cart containing timber, from one end of the yard to the other. The youth had no handling of the timber, and the wage he received was 30/- per week. An action for breach of award was brought by the workers' union, the Inspector of Awards having, I understand, declined to move in the matter, and the Court held that he was a carter, although never required to go outside the yard, and was consequently entitled to the minimum wage of £2/2/-, as prescribed in the Carters' Award. The employer was fined £5. The Court made no order for payment of back wages but, taking advantage of a decision of the Appeal Court, given a short time previously (to which reference will be made presently), the youth's solicitor afterwards made application to the employer for the difference between the wage paid and the Court's minimum wage, the amount involved being about £17.

As will be seen from particulars given on page 83 there were exceedingly few cases brought against workers for breach of award until 1904, when the matter appears to have received some attention, presumably from the Labour Department.

In that Department's report for the year ending 31st March, 1904, an amendment to sub-section (3) of section 87 of the Act of 1900, was suggested. The sub-section named read: "The award, by force of this Act, shall extend to and bind every worker who, not being a member of any individual union on which the award is binding, is at any time whilst it is in force, employed by any employer on whom the award is binding; and if any such worker commits any breach of the award, he

shall be liable to a penalty not exceeding ten pounds, to be recovered in like manner as if he were a party to the award."

The report then proceeds:—

Legal opinions differ as to the meaning of the above section, but at present there is good reason to consider that by its terms non-unionists are brought under the award, but individual unionists are not. The union is regarded as under the award, and is presumably able to control its members, but the supposition entails hardship. All men in a union are not its whole-hearted supporters, and some of them either wilfully or inadvertently accept wages or earnings not permitted by the award. If there is a case proven against an employer who breaks an award by paying less than specified wages, the recipient of such wages is also a defaulter and should be prosecuted. Although in a few cases this has been done in order to make an example, still in the large majority of cases the employer alone is prosecuted. . . .

It is worthy of consideration whether there should not be a limit to the time for which back wages should be paid in a breach of award. That a very large sum . . . . should be paid to a worker who has broken the award by receiving illegal remuneration appears hardly justifiable in a particular case. If prosecuted such worker would be fined instead of rewarded, and although the case of employer and employee are not exactly on the same footing as to direct compulsion, there is reason to fear that unless there has been proof of continued remonstrance as to wages, a policy more characterized by cunning than honesty may dictate silent acceptance of less pay than the award prescribed, while there is concealed the purpose of claiming the difference as a lump sum, in the Arbitration Court. I do not infer that such has hitherto been the case in any action for breach of award, but the weak place is there, and should be exposed.

At Christchurch, in June, 1905, the question of prosecuting workers received some notice from the President of the Arbitration Court. In some general remarks on breaches of awards, the President said that "in some cases it had appeared that men concurring in breaches should have been brought before the Court. That meant no reflection on the Inspector, but he thought that where it was reasonably clear that a man had committed a breach he should be brought before the Court." In a case in which a Christchurch plumber was charged with having paid men less than the prescribed wage, it appeared that the men ought to have been brought before the Court. The latter had represented that they had obtained permits to work for a lower rate of pay. The President remarked that the men ought to have been brought before the Court. The Inspector of Awards having stated that he had been instructed to take proceedings against the employers only, the President said that there should be some good reason why the Labour Department did not prosecute the employees. "Either the men who had concurred in the breach should be charged, or the Inspector should be in a position to give some explanation why they were not charged."

About a week or two after the President's remarks, the Labour Department issued a circular to the Workers' Unions on the subject. The circular, which is here reproduced in full, shows the friendly interest the Department evidently takes in the welfare of the Unions:—

Department of Labour,
Wellington, June 22nd, 1905.

Circular S/05.

To the President and Officers of the Industrial Unions of Workers.

Sirs,—I would esteem it a great favour if you would take some steps towards making the members of your union thoroughly understand that where breaches of award are taken up by the Inspector of Awards, and he is of opinion that the employee is to blame as well as the employer such employee will be joined to the citation.

Our experience shows that a very large number of men commit breaches of awards knowingly, and do not communicate with the Department or Union until something happens in the way of their being discharged or leaving their employer, then they make a complaint as to having received less than the award rate, or had been working overtime without being paid for it, &c., &c.

This circular is being sent for the benefit of the Unions, as it must be patent to all right-thinking Unionists that such a state of affairs should not be allowed to exist.

Trusting this circular will be received in the same spirit it is being sent,

I have the honour to be,
Yours obediently,
J. MACKAY,
Deputy Chief Inspector.

Notwithstanding this circular, and the attention directed to the matter by the Court, the cases against the workers, as will be seen from the figures on page 83 increased from 29 in 1905 to 72 in 1906.

In July, 1906, a very important decision was given by the Court of Appeal on the question whether a workman could sue in an ordinary Court for wages fixed by an award of the Arbitration Court. The particulars of the case which gave rise to the judgment are briefly as follow:—A firm of printers in Pahiatua were, in 1905, fined £10 by the Arbitration Court for having paid a youth named Reese in their employment less than the rate of wages fixed by an award of the Court. No order was made as to the payment of back wages. Reese had been in the service of his employers since 1898, and had never made any objection to the wages he had received, although these had always been from the time the award was made in 1902, paid less than the award rate. The arrears, it appears, amounted to £51/16/-, and after the employers had been convicted in the Arbitration Court, a claim was made in the Magistrate's Court for the recovery of the amount. The Magistrate dismissed the

case, and an appeal against his decision was made to the Supreme Court. In this Court, the Chief Justice allowed the appeal, giving judgment for the amount claimed with costs. In the course of his judgment the Chief Justice said:—

It will be seen that the case raises a very important question. It was contended on behalf of the respondents that, as the appellant had without question received his wages, he could not now be heard to complain that the wages he received were not the wages he was entitled to; that the Court must hold that the contract between the parties had been carried out, and that therefore the appellant had no remedy. It was also said that the award cannot be sued on, and that the breach of an award cannot be forced save in the Arbitration Court. Further, that if the contract was illegal, it was not open to the appellant to recover under it, as the parties were in pari delicto. On the other side, it was contended that the Industrial Award created a statutory right to the specific wage; secondly, that it created a status, and prohibited contracts for wages below the minimum rate fixed in the award. It was also suggested that an infant could not make a contract that was an unreasonable one, as the wage that the Court of Arbitration had fixed was the only proper wage. I am of opinion that the parties could not contract for services at a lower wage than the award sets out. As I had occasion to state in the case of Taylor and Oakley v. Mr. Justice Edwards (18b N.Z.I.R. 876), the Arbitration Court really fixes the status of a workman, and prohibits contracts inconsistent with the status.

After showing that if the subject matter of a contract is unlawful the appellant could not recover any wages, the Chief Justice remarked:—

As I have said before, the right of a workman to make a contract is exceedingly limited. The right of free contract is taken away from the worker, and he has been placed in a conditon of servitude, or status, and the employer must conform to that condition. The relation between the employer and employee is really that of quasi-contract or status, and in some respects, similar to that which existed between the patron and the freedman in Roman Law. This relationship would especially be the case when it is an infant who is the workman. As the contract was not about an illegal matter, as the consideration on the part of the appellant was not illegal, and as the appellant was not able to lawfully agree to the condition of which it is said he implicitly agreed to—that is, as the condition as to wages was illegal—I am of opinion that he can recover, and that the appeal should be allowed. I need not point out that the appellant had no status in the Arbitration Court, and had no power to pursue any remedy in that Court.

In coming to this decision I am of opinion that the jurisdiction of the Arbitration Court is not evaded. It is true, as has been said, that the Arbitration Court has on many occasions specified that part of the penalty for the breach of an award should go to the employee and make up to him for the smaller wage than the award rate that has been paid to him. The fact that the Arbitration Court has done so shows that it thinks that, in some cases, at all events, the employee, though he may have agreed to an illegal condition, ought not to be deprived of the wages fixed by the award.

This decision was upheld by the Court of Appeal, and as the case is of unusual importance, I give the Court's judgment and arguments, as reported in the Book of Awards, Vol. VII., page 163, in full.

WELLINGTON TYPOGRAPHERS.—DECISION OF COURT OF APPEAL re ARREARS OF WAGES.

Court of Appeal, Wellington.—July 18 and 28, 1906.—Edwards, Cooper, and Chapman, JJ.—A. Baillie and Co., appellants, v. Arthur Reese, respondent.

Appeal from Stout, C.J. (vol. vii., p. 163, or May, 1906, "Labour Journal, p. 462), dismissed. The facts are stated in the judgment of Chapman, J.

Herdman, for appellants: The provisions of "The Industrial Conciliation and Arbitration Act, 1905," bind infants. The employer is liable to be fined for a breach of the award, and the infant is liable to be fined as a worker: Subsection (2) of section 92, Act of 1905, No. 32, standing in place of section 86 of the Act of 1900. The meaning of "worker" is defined in section 2. The argument for respondent must be that the award creates a status entitling the worker to the wage fixed. There is no provision in the statute which enables the worker to recover the wage fixed by the award after entering into such a contract as in the present case. The common-law rights have been restricted, but not abrogated. If the parties conspire to defeat the Act, the only remedy is in the Arbitration Court. It is suggested that the award becomes part of the contract, but that would apply to the Truck Act, and in that Act the Legislature considered it necessary specially to give a right of action if the wage is not paid in money. There is no such provision in the Arbitration Act. I concede that the bargain is not legal, but the employer may shelter himself behind the maxim, In pari delicto potior est conditio defendentis. All liberty of contract is not taken away. The parties may contract for higher wages, and may fix the time of commencement and mode of dissolution of the contract. [Chapman, J.: The Court may compel a definite notice to be given to terminate the service.] There is a perfect remedy in the Arbitration Court. The Inspector is bound to bring the matter before the Arbitration Court, which may award the penalty or part of it to the underpaid worker. The respondent cannot affirm and disaffirm. He cannot treat the contract as valid for the purpose of obtaining its advantages and later treat it as invalid for the purpose of obtaining further advantages from the award: Smith v. Baker (L.R. 8, C.P. 350, 357); Roe v. Mutual Loan Company (L.R. 19, Q.B.D. 347); Comitti and Son v. Maher (22 T.L.R. 121). The Arbitration Court has exclusive jurisdiction in the enforcement of awards, and this is an attempt to enforce the award: Section 80. [Cooper, J.: The respondent, then, could recover nothing at all if no wages had been paid?] He could recover on a quantum meruit. [Edwards, J.: Is not that what he is seeking to do here? He sues for remuneration for his work, the value of which is fixed by the award.] The Arbitration Court has full power out of the fine inflicted upon the employer to award the wages underpaid to the servant underpaid: Section 101, subsections (a), (d). If the Legislature had intended that the fines should be paid into the public fund, the language of subsection (d) of section 103 would have been used. The statute, being in derogation of common-law rights, must be strictly construed: Amer. and Eng. Ency. of Law, vol. vi., pp. 662, 671. The statute prescribes a new remedy which alone can be followed; the penalty is the only consequence

of the wrongful act. If the respondent is entitled to succeed, it must be under a contract expressly or impliedly entered into, or on the award itself. There is no agreement, but the contrary, and the question is narrowed to a question whether the respondent can recover on the award itself. In Canterbury Bakers' Union v. Williams (8 Gaz. L.R. 61), Mr. Justice Chapman held that the award could not be sued upon.

Dr. Findlay, for respondent: The question presents difficulty only in ascribing to the obligation to pay the rate of wage fixed by the award some definite legal character. The sources of obligation are best stated in Anson on Contracts (10th ed., p. 7). The sixth source of obligation mentioned by the text-writer is the one nearest to the case: Holland on Jurisprudence (2nd ed., p. 104). The rights and obligations of persons are increasingly determined ex lege instead of by contract. The obligation here may rest upon the judgment of the Arbitration Court, a Court of competent jurisdiction, which we have in our favour. The Court was originally established to settle disputes. "Industrial disputes" are defined by the Act. Could not the wage fixed by an industrial agreement be sued for? New Zealand Clothing, &c., Association v. Auckland Union of Employers (5. Gaz. L.R. 216). We base our claim upon three grounds: (1) It is in the nature of a judgment; (2) it is a statutory contract; (3) it arises from status created by the statute and the award. In "The Factories Act, 1901," section 31, there is a provision for a minimum wage, with a penalty and a provision for recovering the minimum wage. The respondent was not a member of the union, and had no status to enforce the award. This is a judgment: Russell on Awards (9th ed., p. 312). Leake on Contracts (4th ed., p. 8) distinguishes between contracts implied in law and contracts implied by law: Bannatyne v. The King (20 N.Z.L.R. (C.A.) 232). The obligation to pay the minimum wage is a statutory term imported into every hiring-agreement to which the award applies, and the law forbids the worker to contract himself out of it. The third head arises from status: Taylor and Oakley v. Mr. Justice Edwards (18 N.Z.L.R. (C.A.) 885, 887). It is the appellant, not the respondent, who sets up the illegal contract: Cape v. Rowland (2 M. and W. 149); Leak on Contracts (4th ed., p. 505). The respondent being an infant is not bound by the contract. In two years the respondent was paid £51 16s less than he should have been paid, which shows that the contract was unreasonable and not for his benefit: Reg. v. Lord (17 L.J. M.C. 181); Meakin v. Morris (53 L.J. M.C. 72); Fellows v. Wood (59 L.T. 514). We are entitled to say that the respondent is an infant, who has done certain work for which he is entitled to be paid, and that the lowest sum which could be paid to him is the minimum wage fixed by the award.

Herdman, in reply: The answer to the last argument is that the Arbitration Act puts infants on the same footing as adult workers. In Pollock on Contracts it is said that such an agreement is binding on the infant unless it can be clearly shown not to be for his benefit: Stevens v. Jeacocks (17 L.J. Q.B. 163).

Edwards, J.—The respondent sued the appellants for arrears of wages. On the hearing he proved that he had worked in the service of the appellants; that there was an award of the Arbitration Court in force in the industrial district in which he was employed, fixing the minimum rates of wages to be paid by employers engaged in the trade; and that less than the rate fixed by the award had been paid to him in respect of his service. This was all that it was necessary for him to prove to entitle him to recover. He did not set up or rely upon any contract, nor was it necessary for him to do so. Upon proof of the service there arose an implied contract on the part of his employers to pay to him reasonable remuneration in respect of such service. The amount of such

remuneration was fixed by the award as not less than a certain sum, and this sum the respondent sought to recover. The appellants, however, in the course of the respondent's cross-examination, obtained from him admissions which were probably sufficient to support the finding of a contract on his part to serve for the wages actually paid. Having obtained these admissions, the appellants set up as a defence that the contract proved was illegal, and that being illegal the respondent could not recover upon it. The respondent does not, however, sue upon the alleged illegal contract. If he sued upon that contract, clearly he could not recover in the present case, because the appellants have paid to him all that was due under it. He sues in respect of his service, to which the law attaches a definite fixed remuneration. The appellants, not the respondent, set up the alleged illegal contract, and thus seek indirectly to enforce it by using it as an answer to the claim of the respondent, which is not made upon the contract.

In my opinion the appellants cannot be heard to set up this defence to a claim which is otherwise lawful. No doubt, where the purpose of a contract is illegal, as in the case of the demise of lands to be used for an unlawful purpose—Gaslight and Coke Company v. Turner (9 L.J. C.P. 75), in Exchequer Chamber (9 L.J. Exch. 336)—or where the employment of a person in a particular capacity is forbidden by statute —Cope v. Rowlands (6 L.J. Exch. 63—the defendant may set up the illegality, but in these cases the action is brought upon a contract, the purpose of which is to attain an illegal object, and the Courts will not lend their assistance to such a purpose. The object of the contract in the present case was not illegal. It was to procure the services of the respondent in the appellant's trade. The consideration to be paid was not illegal. It was less than the appellants were by law required to pay; but so far as it went, it was a lawful payment, and was pro tanto a discharge of the appellants' obligation to the respondent. The contract itself was not illegal in the sense that it subjected the appellants to a penalty. It was void, and could not be enforced by the appellants against the respondent, but it did not subject the appellants to a penalty. If the appellants, having made the contract with the respondent, had nevertheless paid or tendered to him payment of the wage fixed by the award, they could not have been fined for a breach of the award. The act which subjected the appellants to the penalty was not the contract, but the non-payment of the wage fixed by the award. The respondent, then, served the appellants under a contract which was simply void. I am not aware of any principle upon which the appellants, having taken the benefit of the respondent's services, could set up as an answer to his claim for remuneration in respect of such service the defence that the service was under a contract which was merely void. The case of a client entering into a contract with his solicitor to pay him a lump sum for future services is (apart from modern statutory provisions) a case in which the contract is void as against the client, but nobody ever questioned the right of the solicitor in such case to recover a reasonable remuneration for his services, though it is possible that, in consequence of the jealousy with which transactions between solicitors and their clients are regarded by the Courts, the solicitor might be held not to be entitled to recover more than the sum stated in the agreement. It seems, therefore, plain that in this simple state of the facts the respondent could recover reasonable remuneration for his labour. Apart from the statute and the award, this remuneration would, no doubt, be held to be the sums which the respondent accepted for his service; but here the statute, and the award made in pursuance of the statute, intervene, and declare that the remuneration to be paid to the respondent for his labour shall not be less than the sum fixed by the award.

It was assumed upon the argument of this appeal that the respondent, as well as the appellants, had been guilty of a breach of the award, and that he, like the appellants, was liable to be fined in respect of such breach. I am unable to discern that this is the case. The award simply provides that certain wages shall be paid. Now, the duty of payment is one which falls upon the employer alone. If there is a failure in payment of the wage fixed by the award, the breach of duty is the breach of the employer alone, and it is the breach of a positive duty cast upon him. The award nowhere affects to say that if a worker shall receive less than the wage fixed, that shall be a breach of the award. It appears to me to be very questionable whether it would not be contrary to the policy of the statute to make any such provision in the award. The object of the provision for a minimum wage is the protection of the worker alone, and there could be no more effectual means of concealing a breach of the award in this respect than to make the worker equally responsible with the employer in respect of such breach. Moreover, there is not the same danger that an employer may be driven by actual want to commit a breach of the award in this respect as there is that the worker may be compelled to submit to it. The award in the present case makes no such provision. An award made under a statute which imposes penalties for the breach of such award must be construed strictly, so as not to bring within the penalties any one who has not clearly been guilty of a breach of the award.

In my opinion, therefore, the respondent has not been guilty of a breach of the award, and could not be fined under the provisions of the statute. I do not, however, base my judgment upon this. Even assuming that the respondent was guilty of a breach of the award in accepting monthly payments at less than the rate fixed by the award, I am satisfied that the appellants cannot set up as an answer to their own initial breach in tendering to the respondent a lesser amount than they ought to have paid under the award, the subsequent breach by the respondent in accepting the amount so tendered, nor, for the reasons already stated, do I think that they could do so if the breach by employer and employed were held to be simultaneous. In my opinion, therefore, the appeal should be dismissed, with costs on the lowest scale.

Cooper, J.—This case is one of very great importance, but the judgment of Mr. Justice Chapman, which I have had the opportunity of reading and considering, has so fully and clearly stated the principles upon which the rights and liabilities of workers and employers under an award made by the Arbitration Court are to be determined, and his reasoning is so satisfactory, to my mind, that I adopt and concur generally in his judgment.

On the question whether the liability of an employer for breach of the award is limited to proceedings under the Arbitration Act for a penalty, I wish to add a few words to what my brother Chapman has stated in his judgment. There is a well-settled rule of law that where a penalty is affixed by an Act of Parliament to an act or omission, such penalty is in general the only punishment or loss which can be incurred by the party guilty of such act or omission; but this general rule is subject to this exception, that the proceedings prescribed by the statute must be co-extensive with the right created. In order to ascertain whether that is the case, the whole scope and purview of the statute must be considered. Here the statute gives no power to the worker to enforce the award in the Court of Arbitration, nor any share in the penalty awarded, notwithstanding that a liability is created in the employer to pay, and a right in the worker to receive, the rates of pay fixed by the award. The procedure for a penalty prescribed by the statute is not, therefore, co-extensive with the right created, and the

worker has consequently a right of action in the ordinary Courts founded on the liability of the employer to pay to him the rate of wages fixed by the award. Stubbs v. Martin (1895, 2 Ir. R. Q.B. 70) is one of the latest cases dealing with the general rule and the exception to it, and in that case the principles upon which the rule and its exception are founded are very clearly discussed, and the earlier authorities referred to and considered.

I agree that this appeal must be dismissed with costs.

Chapman, J.—The action was brought in the Magistrate's Court to recover £51 16s, representing the difference between the wages which had actually been paid to the plaintiff, a printer, now respondent, and the amount which should have been paid to him in terms of an award of the Court of Arbitration, which it was admitted bound the parties. This award was made under "The Industrial Conciliation and Arbitration Act, 1900," the provisions of which are repeated in the Act of 1905. The respondent is an infant. He had entered into an agreement for the lower rate of wage. I assume for the purposes of this judgment that there were circumstances which justified the Magistrate in finding, as he did find, that it was a beneficial agreement for the respondent. The Magistrate gave judgment for the appellant. This was reversed on appeal by Stout, C.J., and from his judgment this appeal has been brought.

The questions which this Court has to decide are (1) whether a workman has a right of action for the amount of the wages fixed by an award; and (2) whether he can pursue that action despite an agreement to work for a lower rate.

As to the first question, no difficulty arises in an ordinary case, as a man suing for wages at the rate fixed by an award would be deemed to have impliedly agreed to work at that rate, and his employer would be deemed to have impliedly agreed to pay him at that rate. This, however, does not answer the question, as in that case the award would be looked at merely as a public instrument, settling the current rate of wages upon the basis of which the parties impliedly contracted. This implied contract would arise without reference to whether the parties were actually bound by the award or not. In those circumstances the man is really suing in respect of his common-law rights, and using the award and its publication as part of his evidence. It would be an answer pro tanto to such an action to show that it was common ground that he was not worth nearly so much, and that the intention of the parties to pay and receive on the footing of the award was impliedly negatived. The real question is whether the plaintiff has a right arising out of the award, not whether he has a right arising out of an express or implied agreement. I do not think that it can be said that he can sue on the award in the sense in which a party to an award or a judgment sues upon it. The workman is not a party to the award, though liable for the consequences of disregarding its legislative provisions, and it is foreign to our notion of an action on an instrument, even of so high a nature as a judgment, that one not a party to it should be able to put in a suit. Though a workman may have a right of action arising out of the existence of the award, it is somewhat misleading to speak of it as an action upon the instrument. I think, however, that he has a right of action, though I prefer to describe it in a different way. The purpose of the "Industrial Conciliation and Arbitration Act" is to prevent workmen from unduly lowering the wages and other conditions of labour by excessive competition. It has been found necessary to extend its purpose to that of binding all employers who are parties to it to observe the same conditions. To this end the Court of Arbitration is empowered to fix a minimum wage to be paid by all employers bound

by its award. The award in this case fixed a minimum wage, and for failing to pay it, and for working for less, I will for present purposes assume that the employer and the workman were both liable to penalties. We are asked to decide whether these provisions confer upon the workman a right to sue for the wage so fixed. It appears to me that the proper way to regard the matter is this: the award, when made, is in effect an extension of the statute, the Court's jurisdiction being to this extent undoubtedly legislative. It is thus to be read as if the statute said what it says. In effect, it says that every employer bound by it is to pay the wages fixed by its provisions. Then, as to the individual, I think that when once he is found to be within the class affected, he is in the same position as if the statute had authorised the insertion in the award of his name as the person to whom the payment is to be made, and had done no more. That does not make him a party to the award, but it confers a status defined by law upon him and upon his employer, and I am satisfied that it amounts to a statutory direction to the employer to pay him that sum, and imposes upon the employer a legal obligation to pay it. When a statute imposes such an obligation on one subject in favour of another, irrespective of any contract between them, it gives to that other a right of action to recover the sum given—Huntington v. Attrill (1893, A.C. 150)—and the fact that it makes the act out of which the obligation arises an offence against the State at the same time, cannot derogate from the right thus conferred. Dr. Findlay stated that he found a difficulty in describing the right of action which he claimed in respondent's favour, and especially difficult to give it a designation bringing it into accord with the language used by the authors of our unwritten law. He referred us, however, to Sir William Anson's attempt to classify obligations in the introduction to his work on the "Law of Contracts," and relied on our being able to say that it is either an obligation arising from the judgment of the Court, or an obligation arising from a status created by law carrying an obligation imposed by law. The latter class of obligation is thus referred to by the learned text-writer: "Lastly, obligations may spring from agreement and yet be distinguishable from contract. Of this sort are the obligations incidental to such legal transactions as marriage or the creation of a trust." Such relations may, and generally do, commence with a contract, which, however, merges in the status. It would be difficult in the same way to generically describe the cause of action which the English Copyright Act gives to an offended proprietor, though in that case the right of action is expressly given by statute: Adams v. Batley; Cole v. Francis (L.R. 18 Q.B. 625). All one can say is that it is an action for a sum of money given by a statute, just as in this country an action to recover rates is. In those cases, as in this, something is done or suffered by the plaintiff, for which the Legislature awards him a sum to be paid by the defendant. It is not to be expected that much authority should be found on the subject of this action. Both counsel referred to this subject as an entirely new branch of jurisprudence, with no previous history in English law. The subject, however, of a pecuniary obligation arising out of status has been under discussion in this Court. In Maitland v. Mervyn (1 N.Z. L.R., C.A. 156) the Commissioner of Crown Lands sued to recover an instalment due in respect of a deferred-payment license issued under "The Land Act, 1877." This Court decided that it was optional with the selector to forfeit his holding by omitting to observe the condition as to payment of this sum. It held, however, that there was no contract to pay the sum, and that the Commissioner had no power to exact such a contract; but that the sum, if recoverable, was recoverable by force of the statute alone, which, however, as construed by the Court, did not give a right of action for it. Indirectly that decision has a bearing

upon this case. I am, for the above reasons, of the opinion that the statute intended to make the right to receive the wage a right enforceable by the workman, and that there is no ground to be found in the Act for limiting its operation to the penal consequences annexed to the appellants' default.

The second question is whether this right is affected by the contract made between the parties. That, however, is answered by the foregoing considerations. It is admitted that the contract is void, and that really disposes of the matter. In the view I have taken of the case, the contract of service with which the relation between the parties commenced has nothing further to do with the matter. I have taken some pains to point out that this action is not on a contract, but on a right created by statute. If that view is sound, it cannot be affected by a void agreement, though, if the plaintiff had in any way to reply on the agreement, different considerations might arise. The defendant is now setting it up, but the plaintiff is content to ignore it. It was urged by Mr. Herdman that the statute gave an adequate remedy through the Court of Arbitration. It really gives none. The workman individually has no rights in that Court, though he is under certain obligations. The award can only be enforced by a party to it, or by a duly appointed Inspector. It is true that the Court has found means to secure unpaid wages for workmen by including them in the penalty, and directing the union or Inspector to pay them over to the injured party. The Court took this course upon an assumption, made before this branch of the law had received attention, that the workman had no direct redress. It is not material now to inquire whether the Court has power thus to bind the party who recovers the penalty. It has been assumed that under section 94, subsection (4) of the Act of 1900 it had this power, and, as the employer was no longer concerned when he had paid the penalty, and the unions and Inspectors willingly acted on this assumption, no person was aggrieved. The Court, however, made a practice of refusing to act in this way in favour of a person who had concurred in the illegal action of his employer, a subject into which it could only imperfectly inquire, as the workmen were not formally before the Court, and might indeed have disappeared before the proceedings were taken. In all these matters the Court of Arbitration has acted on the assumption that the workman had no legal rights that could be enforced in that Court, an assumption which is indisputably correct.

For these reasons I agree with the judgment of the Chief Justice, though there may be some slight difference in the mode of arriving at the result. The judgment must be affirmed, with costs on the lowest scale.

It was suggested that as this judgment will enable all employees working under awards to recover in a court of law any wages paid short of the award rate, a good deal of litigation will take place. In the Canterbury district, I am informed that a considerable number of claims for back wages have been made since the judgment was given. In the case against the Christchurch timber-merchant already referred to, the back wages were paid out of Court.

It has been proposed that there ought to be a limit to the time during which a worker can sue for arrears. It is clear from the judgment quoted that there is nothing to prevent a worker

suing for back wages at any distance of time after the wages are due. The Minister for Labour has been interviewed on the matter by the Parliamentary Committee of the New Zealand Employers' Federation, and urged to endeavour to have the following amendment to the Arbitration Act passed:—

> No worker shall have any claim upon any employer for wages or overtime which such workman may consider to be due to him over and above the amount of wages and overtime paid to him on the regular pay-day by his employer, unless such workman shall on or before the next ensuing pay-day demand payment thereof.

The decision of the Appeal Court ought to have one important result. It ought to make employers pay the closest attention to the advice repeatedly given them by the President of the Arbitration Court, namely, that they should familiarise themselves with the awards under which they are working, and adhere strictly to them. If they did this, they would not only escape the inevitable fine, but the certain payment of back wages, no matter whether the workers in question were worth the prescribed minimum or not. At a sitting of the Court held in Wellington in December, 1906, the President said that the employers in that city neither tried to evade nor to break the awards—*they completely ignored them.* Possibly, however, more attention may be given to the awards in future by employers. Until lately quite a large number of the latter were not in possession of copies of the awards by which they were bound. They had only an imperfect knowledge of the awards, obtained probably from a newspaper; they had not procured official copies. These were obtainable from the Clerk of Awards for a fee of a few shillings, or from the Labour Journal, published monthly. I have not infrequently met employers who had not the remotest idea of where copies of the awards were to be had, and I have met others who were unable to tell whether they were a party to an award or not. As has been pointed out in a previous chapter, if an employer starts business while an award is in force in the trade in which he is engaged, he must observe all the conditions in the award. He may be a stranger in the district he has chosen to settle in, but he is expected, nevertheless, to find out whether he has to comply with an award or not. When the Court held a sitting in Christchurch, in August, 1906, I suggested while a case in which I appeared was being dealt with, that when a stranger came to the district and was obliged to observe an award, the Inspector might advise him of his obligations, instead of bringing him before the Court for having committed a breach. The President said he did not consider it was the function of the Inspector to go after

employers and acquaint them with their obligations, but thought that in the case before him, the employer might have been called upon by the Inspector. About a month afterwards, the Labour Department decided that after each award was made every employer made a party to it should be furnished with a printed copy of it. The following is a copy of the circular the Labour Department forwards with each copy of award:—

Department of Labour,
(Town).....

To.....

.....

Enclosed please find copy of the Award recently made under the Industrial Conciliation and Arbitration Act, to which you are a party.

Many employers, when breaches of award have been brought under their notice have pleaded ignorance as a justification or in extenuation of the offence, but the Court has intimated very plainly that this plea cannot be accepted. In order to assist employers to a complete understanding of their duties in connection with any award in which they are interested, the Department is sending to each of them who is a party a copy of the award, at the same time advising you, for your own protection, to make yourselves thoroughly acquainted with its provisions.

.....,
Inspector of Awards.

Whether the decision to assist employers to understand their duties in respect to awards was the spontaneous act of the Department or whether it was arrived at in consequence of a representation made to them by some authority, I am unable to say, but one cannot help regretting that such a step was not taken years ago, as it is extremely probable that it would have spared a large number of employers from being dragged before the Court for breach of award.

The facilities provided by the Department for anyone obtaining information respecting an award are far from satisfactory. One official copy is lodged with the Clerk of Awards, and if anyone wishes to know the full contents of the award, he has to call at the clerk's office and either make a copy of it, or order a copy to be typewritten, a fee varying from 2/6 to 12/- or more being charged. The award, in most instances, does not appear in the "Labour Journal" until a month or two after it has been in force. In giving evidence before the Labour Bills Committee in 1904, Mr. C. M. Luke, Wellington, said: "I am a very busy man and have not time to take every award made by the Arbitration Court, digest it, and be seized of its effects. The main points come to one's notice often through the medium of a newspaper, and in that connection I should like to say this, that in the case to which I referred (a breach of award) . . . we had sent to the Department here for a copy of the

award. . . The award, however, was not printed, and we were told that we could take a pen and ink copy of it from the office. But it was a fairly long award, and we had not a clerk whom we could spare for the purpose at the time. The result was that the matter was allowed to slip by, and it was some time afterwards that we bought a copy of the award. It was after we had been cited, and then we found that we had committed a breach of the award, and laid ourselves open to the Court proceedings. Well, I say that facilities should be given to employers to get a copy of these awards very speedily. As soon as that is done and the machinery made to work more smoothly, I believe there would be very many fewer cases in the Court."

Even the printed copy now supplied by the Department does not reach the employer until some weeks at least after the date of the award. There does not seem to me to be any reason why, whenever an award is made, the printing of copies should not be proceeded with at once, so that these may be in the hands of the employers before the award comes into operation.

The employers of the Dominion, however, must be grateful for the attention which, so far, has been given them by the Department, and any further recognition of them will, I feel sure, be duly appreciated.

During the past few years the Government has brought forward an amendment to the Conciliation and Arbitration Act providing for breaches of awards being heard and determined by Stipendiary Magistrates. The chief reason urged in favour of the proposal is that it would relieve the Arbitration Court of a great deal of work. For some time the work of the Court was greatly behind, and it is only recently that it has been able to overtake its arrears in the various centres. The first time the amendment referred to was introduced was in 1903. The main portion of it reads as follows: —

1. Notwithstanding anything in the principal Act, all proceedings for enforcing any award (whether before or after the commencement of this Act) shall be heard and determined by a Stipendiary Magistrate, whose decision shall, subject to the next succeeding sub-section, be final.
2. Any party to the proceedings may—
   a. Where the amount in dispute does not exceed fifty pounds, with the leave of the Magistrate; or
   b. Where such amount exceeds fifty pounds, without such leave, appeal from the decision of the Magistrate on any point of law.

On the recommendation of the Labour Bills Committee, the clause was struck out, and nothing further was done in the matter during the session of 1903. In 1904 the Secretary for Labour, in his annual report, wrote:—

There are continual complaints made as to the delay in hearing cases caused by the accumulation of work in the Arbitration Court. Not only does such delay allow the continuance of matters regarded as evils, but it seriously prejudices the position of the parties laying information, as important witnesses leave their work and the district before the case is called on. If the jurisdiction of the Magistrate was limited to breaches not involving more than £50 of claim, this would probably greatly ease the work of the higher Court.

In the same year the proposal to have enforcements dealt with by a Magistrate was introduced again, this time in a special Bill. The cases to be dealt with by the Magistrate, however, were limited to those in which the maximum penalty did not exceed £50, an appeal against the decision of the Magistrate being allowed on any point of law.

The measure was opposed by the New Zealand Employers' Federation, and I here give a few extracts from the evidence submitted by the Secretary to that body to the Labour Bills Committee of the House of Representatives:—

One of our reasons for the objection we make is that the Stipendiary Magistrate's Court has already plenty of work to do. We believe that if the object of the bill be to remove a glut from the Arbitration Court it will only be effected at the expense of lodging that same glut in the Stipendiary Magistrate's Court. . . . But the chief objection we have to the measure is that we think the Court which gives the award is the only fit authority to deal with it in its enforcement and administration. It is to be remembered that these awards are the outcome of a very considerable amount of evidence and information supplied to the Arbitration Court; that the awards deal with all that concerns the carrying on of the industries of the Colony; and by reason of the evidence which is supplied to the Arbitration Court being so plentiful, the Arbitration Court comes to be practically an expert in industrial matters. . . . . The Court is thus supplied with an immense amount of information, which we hold is of the utmost value in itself, and is absolutely necessary for the administration of the award. That information would not be in the possession of the Stipendiary Magistrates. . . . . We therefore think that the Arbitration Court is the only Court that is really competent to administer and enforce awards. . . . . Then we believe that if the enforcement of these awards were left to the Stipendiary Magistrates of the Colony we should have considerable diversity in the interpretation of the awards and in the administration of the Act. That we think to be very undesirable."

The Bill was dropped by the Government, but in 1905 the clause, which re-appeared in the 1903 Bill, was re-inserted in an amending measure, thus making it clear that the Magistrate would deal with all breaches, an appeal being allowed only on any point of law. The provision was once more struck out, on the recommendation of the Bills Committee, and in the session of 1906, the matter was not dealt with. Probably, if the Arbitration Court can avoid falling into arrears with its work, no serious attempt will be made to have the enforcement cases handed over to the Magistrate.

CHAPTER X.

PREFERENCE TO UNIONISTS.

There is no matter in connection with the administration of the Conciliation and Arbitration Act which has caused more discussion than the claim of unionists for preference of employment. The principle of preference has been one which few, if any, employers have ever recognised as being founded on abstract justice, although some have, as a matter of expediency, offered little opposition to its adoption.

The claim of the unionists appears to have been first recognised by the Arbitration Court in December, 1896, when the following clause was inserted in the Canterbury Bootmakers' Award:—

> Employers shall employ members of the New Zealand Federated Bootmakers' Union in preference to non-unionists, provided that there are members of the union who are equally qualified with non-members to perform the particular work required to be done and are ready and willing to undertake it. When non-members are employed there shall be no distinction between members and non-members. Both shall work together in harmony, and both shall work under the same conditions and receive equal pay for equal work. Any dispute under this rule to be decided by the Chairman of the Conciliation Board for the district under the Industrial Conciliation and Arbitration Act, or if he shall be unable or unwilling to act, then by some person nominated by him not being connected with the trade and not being a manufacturer or employed in the trade.

I am informed that the then President of the Court (Mr. Justice Williams) was asked, in the event of a non-unionist and unionist being available, who was to determine which was the better qualified for the work required to be done. The President, it is said, replied that the employer was to be the judge in the matter.

The Court granted preference in other awards, notwithstanding the objections of the employers, but the terms of the clause varied considerably. Sometimes the clause would be similar to the one just quoted; another award would simply read: "Members of the Union shall be employed in preference to non-members, provided there are members of the union equally qualified with non-members to perform the particular work required to be done, and ready and willing to undertake it"; another would, in addition to this, require the union to

keep an employment book, in which the names and addresses of all members of the union out of employment were to be entered, and that in the event of the book not being kept in the manner required the employers were to be at liberty to employ either unionists or non-unionists.

About 1900, the Court (Judge Edwards, President) adopted a most comprehensive clause. It was as follows:—

Preference of Unionists.—If and after the Workers' Union shall so amend its rules as to permit any person of good character and sober habits now employed in this industrial district, and any other person now residing or who may hereafter reside in this industrial district who is of good character and sober habits, and who is a competent journeyman, to become a member of the Workers' Union on payment of an entrance fee not exceeding 10s., and of subsequent contributions, whether weekly or not, not exceeding 6d per week, upon the written application of the person desiring to enter the Workers' Union, recommended by two members of the Workers' Union, or accompanied by a satisfactory certificate from some respectable person residing within the industrial district, without ballot, or other election, and shall give notice in writing of such amendment with a copy thereof by publishing the same in the "Lyttelton Times" and in the "Press," newspapers published in Christchurch, then and in such case and thereafter employers shall employ members of the Workers' Union in preference to non-unionists, provided that there are members of the Workers' Union equally qualified with non-members to perform the particular work required to be done, and ready and willing to undertake it.

Notwithstanding the provisions of the last clause, employers may in cases of urgency from time to time employ upon daily wages master tradesmen who are not members of the Workers' Union: provided that not more than one of such master tradesmen shall be so employed in any one week for a greater length of time than sixteen hours, and that the employer so employing any master tradesman shall within seven days thereafter give notice in writing of such employment to the Workers' Union.

Until compliance by the Workers' Union with the conditions of clause 17, employers may employ journeymen whether members of the Workers' Union or not; but no employer shall discriminate against members of the Workers' Union, and no employer shall, in the employment or dismissal of journeymen, or in the conduct of his business, do anything for the purpose of injuring the Workers' Union whether directly or indirectly.

When members of the Workers' Union and non-members are employed together there shall be no distinction between members and non-members, and both shall work together in harmony and under the same conditions, and shall receive equal pay for equal work.

So soon as the Workers' Union shall perform the conditions entitling the members of the Workers' Union to preference under the foregoing clauses, and at all times thereafter, the Workers' Union shall keep in some convenient place within one mile from the Chief Post-office in the City of Christchurch, a book to be called "The employment book," wherein shall be entered the names and exact addresses of all the members of the Workers Union for the time being out of employ and desiring employment, and a note as to whether or not such members hold a Drainage Board certificate, and addresses and names and occupations of every employer by whom each such workman shall have been

employed during the preceding nine calendar months. Immediately upon such journeyman obtaining employment a note thereof shall be entered in such book. The executive of the Workers' Union shall use their best endeavours to verify all the entries contained in such book, and the Workers' Union shall be answerable as for a breach of this award in case any entry therein shall in any particular be wilfully false to the knowledge of the executive of the Workers' Union, or in case the executive of the Workers' Union shall not have used reasonable endeavours to verify the same. Such book shall be open to every employer without fee or charge, at all hours between 8 a.m. and 5 p.m. on every working day except Saturday, and on that day between the hours of 8 a.m. and noon. If the Workers' Union fail to keep the employment book in manner provided by this clause, then and in such case, and so long as such failure shall continue, any employer may, if he so thinks fit, employ any person or persons, whether a member of the Workers' Union or not, to perform the work required to be performed, notwithstanding the foregoing clause.

Notice in writing in the "Lyttelton Times" and the "Press" newspapers, published in the city of Christchurch, shall be given by the Workers' Union of the place where such employment book is kept, and any change in such place.

By many employers in the Colony, the granting of preference by the Court was not only strongly objected to, but was considered *ultra vires*. It was after the above clause had been inserted in the Christchurch Plumbers' Award, in January, 1900, that the Canterbury Employers' Association decided to test the right of the Arbitration Court to grant preference. In its action the Association was supported by the Wellington Employers' Association, which at the time was the only other large organised body of employers in the Colony. The case was first heard before Mr. Justice Denniston, at the Supreme Court, Christchurch, and excited a good deal of interest. Mr. Justice Denniston's judgment, which was delivered on the 27th January, 1900, was as follows:—

In the Supreme Court of New Zealand, Canterbury District.

TAYLOR AND OAKLEY v. HIS HONOUR W. B. EDWARDS AND OTHERS.

(JUDGMENT OF DENNISTON, J.)

Shortly stated, this action is brought to test the right of the Arbitration Court constituted under "The Industrial Conciliation and Arbitration Act, 1894" to include in an award an order that employers shall give preference to unionists over non-unionists.

Section 52 of the Act provides that the Arbitration Court "shall have jurisdiction for the settlement and determination of any industrial dispute" referred to it by any Board of Conciliation or by petition or by industrial agreement or otherwise in pursuance of the Act. The jurisdiction of a Conciliation Board is given by sections 42 to 46. Any industrial dispute may be referred to it for settlement either by or pursuant to an industrial agreement or by any party to an industrial dispute. The parties to an industrial dispute may comprise

(a) An individual employer, or several employers, and an industrial union, trade union, or association of workers.

(b) An industrial union, trade union, or association of employees, or an individual employer, or several employers, and an industrial union, trade union, association of workmen, or several such unions or associations.

The parties to industrial agreements may (s. 17) be (1) trade unions, (2) industrial unions, (3) Industrial Associations, (4) employers: and "any such agreement may provide for any matter or thing affecting any industrial matter or in relation thereto, or for the prevention or settlement of any industrial dispute." An "industrial dispute" is defined by section 2 to mean any dispute arising between one or more employers or trade unions, industrial unions, or associations of employers and one or more industrial unions, trade unions, or associations of workmen in relation to industrial matters as in the Act defined. "Industrial matters" is defined to mean all matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offence; and, without limiting the general nature of the above definition, includes all matters relating to—

(a) The wages, allowances, or remuneration of any persons employed in any industry, or the prices paid, or to be paid therein in respect of such employment;

(b) The hours of employment, sex, age, qualification or status of workmen, and the mode, terms, and conditions of employment;

(c) The employment of children or young persons, or of any person, or persons, or class of persons in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein;

(d) Any established custom or usage of any industry, either generally or in the particular district affected;

(e) Any claim arising under an industrial agreement.

It is claimed by the plaintiffs that the jurisdiction of the Court is strictly limited to questions covered by these sub-divisions: and that the question of preferential employment of any class of labour is not within them.

The title of the Act (omitting so much as is excluded by the amending Act of 1898) is an Act to facilitate the Settlement of Industrial Disputes by Conciliation and Arbitration. Its object clearly is to prevent between employers and workmen differences and consequent strikes and lock-outs by in the first place offering facilities for friendly negotiations and settlement; and in the last resort to compel a reference to a tribunal empowered to determine questions in disputes, to direct what shall be done to settle them, and to enforce its directions. Such a tribunal would, to be fully effective, be expected to have power to do and order all things which could legally be done or agreed to by agreement between an employer or body of employers, and his or their employed. Now, undoubtedly a subject, and a principal subject of late years between employers and employed has been the claim of associated labour to decline to work with unassociated labour. This claim, which has been sometimes conceded—more frequently resisted—has been the subject of extensive and prolonged strikes by the employed and lock-outs by the employers. I have never heard it contended—certainly I do not think that after Allen v. Flood it could be contended—that its concession is illegal, as against public policy. It would be a valid subject of reference to any arbitrator appointed by consent of the parties, and any award in respect of it could be enforced. The contention of the plaintiff is that as to this important point the Act is inoperative,

and that it still must be decided by the machinery of strikes or lock-outs. I think the question of preferential employment may without any straining of the words be held to be within sub-section (b)—"the . . . . . qualification or status of workmen and the mode, terms, and conditions of employment": or of (c) "the employment of . . . any person or persons or any class of persons in any industry, or the dismissal or refusal to employ any particular person or persons or class of persons therein." The case of an employer or combination of employers dismissing or refusing to employ any unionist—experience tells us a by no means impossible contingency—seems to me exactly contemplated by this provision. In any case the question seems to me one within the general words of the section, as a matter affecting the privileges, rights, or duties of employers or workmen (not of associated workers only) and these general words are expressly declared not to be limited by the subsequent special provisions.

It was very strongly contended for the plaintiffs that the effect of the discrimination in question was to deprive unassociated labour of its existing rights, and that such rights could not be taken away without express words, particularly where, as under the Act unassociated labour was not entitled to be heard or represented. Without discussing whether this exclusion was in furtherance of the then intention of the Legislature, as declared in the title to encourage the formation of industrial unions and associations, it is sufficient to say that in my opinion to give individual workmen the right of putting the law in motion in case of every dispute would make the Act unworkable. Any number of individuals, not less than seven, can under the Act be registered as an industrial union. This does not seem an unreasonable unit to require for the initiation of proceedings. Strictly speaking, the compulsory discrimination takes away no rights, but of course it does so indirectly. A non-unionist is not debarred from offering his services but the employer is forbidden to accept them. But this is the case in many of the matters expressly provided for. When a minimum wage is fixed, an employer is forbidden to pay less to any person, whether he were or were not a party to the dispute. So as to hours of employment, number of apprentices, and other matters. Every argument addressed to me as to this point on the present contention would be equally applicable to an award limiting the number of apprentices to be employed in any trade.

The statement in 1896 of Mr. Justice Williams, the first President of the Arbitration Court, on the first occasion in which it ordered preference, on certain conditions, to unionists, assumed the power of the Court to make such an order. In these proceedings I have, of course, nothing to do with the reasons which led the Court after very careful consideration to exercise this power. This, as are all other questions, has been left to the discretion of the Court in each case.

I come, therefore, to the conclusion that the award I am asked to prohibit is within the jurisdiction of the Court. Judgment will be for defendants with costs on lowest scale.

The employers were naturally disappointed at the judgment, but resolved to take the case to the Court of Appeal. The appeal was heard before the Chief Justice and Justices Williams and Connolly, whose judgments are given below, that of the former being taken from Book of Awards, Vol. I., page 304, and those of the latter, evidently condensed, from the Christchurch newspapers of the 11th May, 1900:—

CHRISTCHURCH PLUMBERS—JUDGMENT OF COURT OF APPEAL.

TAYLOR AND OAKLEY, APPELLANTS; EDWARDS, J., AND OTHERS, RESPONDENTS.

(JUDGMENT OF STOUT, C.J..)

"The Industrial Conciliation and Arbitration Act, 1894," was passed to provide a means of settling labour disputes. It created for every labour district a Board whose function was to try and act as a conciliator between employers and employees. It may be that in some districts the Boards have not sufficiently recognised that their duty was not to hold a Court, but to bring about some amicable arrangement. If the efforts of the Board failed, then either party could appeal to a Court called the Court of Arbitration. The question had been raised as to the powers and jurisdiction of this Court, and a writ of prohibition has been moved for to prevent the Court awarding a preference to trade-unionists. The Supreme Court has refused to grant such a writ of prohibition, and an appeal has been taken against this decision. It is clear that all disputes that may arise between employers and employees are not within the jurisdiction of the Court. The Court has jurisdiction over what is termed in the Act "industrial disputes." The Act states that "industrial disputes" means "any dispute arising between one or more employers or industrial unions, trade-unions, or associations of employers, and one or more industrial unions, trade-unions, or associations of workmen, in relation to 'industrial matters, as herein defined."

Individual employees—employees not belonging to any union or association—are excluded from the operations of the statute. And employers cannot bring before a Board or the Court any dispute between them and their workmen if the workmen are not members of some union or association. If it be the case that there are several thousands of workmen who do not belong to any union or association, it will be seen that the statute has a limited application, for non-associated workmen have no status under the statute. The question is, Can the Court declare that non-associated workmen shall only be employed by employers if there are no workmen of equal ability and qualifications belonging to unions or associations? Can the employers be compelled to give a preference to trade-unionists? Non-associated workmen have, as it has been said, no status in the Court of Arbitration. The Court cannot hear them, and it is no doubt contrary to the principles of justice on which Courts act that decisions affecting their rights and privileges should be given against parties whom the Court has not heard and cannot hear. If the words of the statute are plain, however, effect must be given to such a position. The statute must be obeyed, however contrary to what is called "natural justice" it may appear. The power of our Legislature is practically unlimited in dealing with local affairs. It is not limited by any declarations such as appear in the Constitution of the United States. The status of individuals may be changed, contracts may be violated, and the rights of persons or corporations affected, and there is no appeal against such Acts of the Legislature to any Court in New Zealand. The arguments addressed to us, therefore, of interference with private rights can only be valid this far: that the Court will not assume that such an interference has been contemplated by the Legislature, and will carefully scrutinise any statute that seems to affect individual rights. If, however, the words of the statute are plain and unequivocal, effect must be given to the Act of the Legislature.

In construing this Act the aim of the statute cannot be ignored. It does not, as I have said, propose to provide a means of settling disputes

between employers and non-associated workmen. It has created a Board in every district and a Court to settle disputes between associated workmen on the one side, and associated or single employers on the other. Then, the dispute must be in reference to industrial matters. "Industrial matters" are defined as "all matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or workmen in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offence. And without limiting the general nature of the above definition includes all or any matters relating to—(a) The wages, allowances, or remuneration of any person employed in any industry, or the prices paid or to be paid therein in respect of such employment. (b.) The hours of employment, sex, age, qualification, or status of workmen, and the mode, terms, and conditions of employment. (c.) The employment of children or young persons, or of any person or persons, or class of persons, in any industry, or the dismissal of or refusal to employ any particular person or persons, or class of persons, therein. (d.) Any established custom or usage of any industry, either generally or in the particular district affected. (e.) Any claim arising under an industrial agreement."

"Industrial matters," as defined in the statute, seem to me to include every kind of possible dispute that can arise between an employer and his workmen. All contracts regarding labour are controlled and may be modified or abrogated. The Court can make the contract or agreement that is to exist between the workmen and the employer. It abrogates the right of workmen and employers to make their own contracts. It in effect abolishes "contract" and restores "status." The only way the Act can be rendered inoperative is by workmen not associating or not joining any union. For, as has been said, the statute cannot deal with unassociated workmen. No doubt the statute, by abolishing "contract" and restoring "status," may be a reversal to a state of things that existed before our industrial era, as Maine and other jurists have pointed out. The power of the Legislature is sufficient to cause a reversion to this prior state, though jurists may say that from status to contract marks the path of progress.

The only question this Court has to determine is whether the words of the Act are clear enough to show that the Court of Arbitration has the power claimed for it. First, it is to be noticed that limiting the power of the employers as to the workmen they must employ is a matter affecting their privileges, and thus in the very first paragraph of the definition of an "industrial matter." In sub-clause (b.), which has been quoted, power is given to the Court to deal with the status of workmen. The term "status" is a wide one. It has been said to include the following things: Sex, minority, marriage, celibacy, mental defect, physical defect, rank, caste, profession, official position, race, colour, slavery, civil death, illegitimacy, heresy, foreign nationality, hostile nationality, and even then the list is not exhausted. Then, sub-clause (c.) says that "industrial matters" includes the "class of persons" that can be employed. I am of opinion that the Court, having power to determine the status of workmen and the class of persons to be employed, has power to declare that trade-unionists shall have a preference over workmen not belonging to a trade-union.

Many of the industrial disputes that have arisen have been disputes between workmen and employers as to whether non-unionists should be employed along with unionists, and it would be strange that this fertile source of strikes and disputes should have been excluded from the jurisdiction of the Court of Arbitration. The Court has, in my opinion, power to give a preference to unionists, even though non-unionists are not heard by the Court, and not allowed to represent their case. The

Court, as I have said, can control the privileges of employers, and can fix the status of workmen, or the class of persons that can be employed. Whether the Court can or cannot give a preference to workmen belonging to one union over workmen belonging to another union is not before us. If it were I should think that it was doubtful if such power could be exercised by the Court. The learned Judge in the Court below pointed out that non-associated workmen could easily acquire the status of trade-unionists. Five workmen or five workwomen can form an industrial union.

This Court has no control over the Court of Arbitration in matters within its jurisdiction. It may in such matters act on its own interpretation of law, and its own findings of fact, without appeal from any of its decisions. No Court can control it once it is shown to have dealt with an "industrial dispute" as defined in the statute. For the reasons I have given I am of opinion that the Court of Arbitration can, if it chooses, give the preference mentioned, and therefore the appeal must be dismissed, with costs on the middle scale, and as from a distance.

Mr. Justice Williams said that if the Arbitration Court had jurisdiction to consider a dispute, it also had jurisdiction to decide it in such manner as it considered just. The Act conferred no status on workmen who were not members of a union. It was not intended that they should be represented, nor did the contemplated decision giving preference to unionists affect any legal right of a non-unionist workman. A non-unionist had a legal right to demand employment. He would sell his labour at what price and on what terms he chose, provided he could find an employer able and willing to accept his terms. The effect of giving preference was to place a restraint upon an employer and not to interfere with the rights of non-unionists. It prevented an employer employing non-unionists except under certain conditions, but non-unionists never had a right to compel an emlpoyer to employ them or to demand employment unconditionally. The whole scope of the Act was to give the Court jurisdiction to restrain employers on the one hand and trade-unions and their members on the other.

Mr. Justice Connolly said, in his judgment, that it was not unworthy of notice that part of the title of the Act of 1894 was "an Act to encourage the formation of industrial unions and associations" and any seven persons, either employers or workmen, might be registered as an industrial union. The Amending Act of 1898 omitted these words, but the fact remained that both Acts did encourage the formation of industrial unions. Since an individual workman had no status before the Court, he was therefore of opinion that the Arbitration Court might in its discretion include in any award or direction an order that unionists should have a preference in employment over non-unionists, provided that they were equally capable workmen. The unanimous judgment of the Court, therefore, was that the appeal must be dismissed with costs on the middle scale.

When the Appeal Court's decision was made known, the feeling among the employers throughout the Colony was that an appeal should be made to the Privy Council on the matter. Many felt sure that the highest tribunal in the British Empire would put its veto on any attempt to interfere with the right of the employer to employ whom he pleased, and the right of any non-unionist worker to have an equal opportunity with the unionist of earning a living. Legal opinion, which was taken

on the matter, was to the effect that, even supposing an appeal to the Privy Council resulted in the Appeal Court's decision being reversed, the victory might be a very short-lived one, as there was, it was said, nothing in the Constitution of New Zealand to prevent Parliament from making preference of employment to unionists the law of the land. The employers were satisfied with this advice, and decided simply to oppose the granting of preference as occasion demanded.

In the Parliamentary session of 1900—very shortly after this important question was dealt with by the law courts—an amending Conciliation and Arbitration Bill was introduced, in the interpretation clause of which it was made clear that "industrial matters" among other things, related to "The claim of members of industrial unions of workers to be employed in preference to non-members."

From a return issued in 1906, by an order of the House of Representatives, some useful information is given with regard to the preference as dealt with by the Court. The total number of awards in force on the 31st March, 1906, was, it appears, 159. In 115 of these preference was granted; in 40 cases it was refused, and in 4 others it was not asked for. The conditions under which preference was granted may be briefly summarised as follows:—

In 76 awards it was required that the rules of the union should permit any person of good character to become a member of the union, without ballot or other election, upon the payment of an entrance fee not exceeding 5/-, and subsequent contributions not exceeding 6d. per week; that members of the union were to be equally qualified with non-members to perform the work required to be done and ready and willing to undertake it; that an employment book was to be kept in which the names and addresses of the members of the union were to be entered, and that failing the correct keeping of this book, employers were to employ whom they pleased. In 14 awards, the provisions were similar to the foregoing, but did not require an employment book to be kept. In 9 awards it was simply required that members of the union were to be equally qualified with non-members to perform the work required to be done, etc.; in 5 others there was this provision with the addition that an employment book was to be kept; in other 5 absolute preference was given without conditions; in other 2 no conditions were attached; and in the remaining 4 an employment book was to be kept.

Where preference has been given without any conditions being attached, the employers have not been aware of the full effect of such a provision, otherwise they would have strenuously opposed it, and insisted upon the usual qualification being inserted. In one case, to my knowledge, the employers allowed unconditional preference to be inserted in an agreement, and afterwards found out the mistake they had made. The clause simply stated that preference of employment was to be given to members of the union, and the employers, I believe, took it for granted that this meant "all other things being equal." Some time after the agreement was in operation one of the employers bound by it was charged with having employed non-union men while union men were available. It appears that he had some contract work on hand, and the labourers he employed at first, who were unionists, were discharged because they were not considered capable of carrying out some new part of the work. Other men were consequently engaged, and these happened to be non-unionists. The employer, in stating his case to the Court, said that the interpretation he and others had put upon the preference clause in the agreement was that preference was to be given only to unionists who were equally qualified with non-unionists to perform the work required to be done. The President of the Court (Mr. Justice Cooper) told him plainly that the clause could mean only that unionsts must be employed whether suitable for the work or not. In fact, the President added, a unionist with a wooden leg would have to be employed if no other unionist more capable was available. The employer, who was somewhat surprised when told this, was fined and had to pay costs.

Where the employers have made out a good case against the granting of preference, the Court has usually declined to include it in the award, and there can be little doubt that if all employers had in the past made it an invariable rule to oppose preference, fewer awards would contain it at the present time. The principal ground upon which the Court has refused preference, in a number of cases has been, I believe, because the number of members of the particular union has been shown to be only a small proportion of the workers concerned. In the retail trades, preference has, in most cases, been strongly opposed by the employers. It has been argued, and with good reason, that while a grocer's assistant, for example, may be good at figures and at putting up parcels, he may lack other qualities to make him a valuable servant. His manner may be greatly at fault, or his

personal looks may not be in his favour. It has been held, therefore, that the employer should be perfectly free to choose assistants who have other qualifications besides mere competency. In the grocery trade in the four chief centres of the Dominion, preference has been given only in Wellington, and that was entirely due to some mistake on the part of the employers when the first dispute was before the Court.

The chief argument which the workers advance in making their claim for preference of employment to their members is that the unions have to bear all the expense and trouble of bringing a dispute before the Board or Court, and that whatever advantages are obtained through their action are enjoyed by the non-unionists, who contribute nothing to the cost incurred. The unionists therefore contend that they are justly entitled to the preference they ask for. This argument, which may seem a plausible one at a first glance, evidently presupposes that the non-unionist ought not to have a mind of his own on such a matter, but that he ought to do precisely what a certain section —most likely a very small section—of his fellow-workers do. The non-unionist may be a thoroughly skilled man, and independent of any movement for an increase in wages—a man who can command a good wage through sheer merit—but if he declines to become attached to a union he, according to the decree of some of his co-workers, must give way to another man whose main recommendation is that he is a member of the union. Some workers have conscientious objections against joining a union, but if the unionist contention is sound, such ought to throw any conscientious scruples they have to the winds.

Many employers have been charged before the Court with committing a breach of the preference clause. Some of the cases were not proved; and among those in which convictions were obtained, are not a few which are decidedly trivial. The following may be taken as typical of most of the cases dealt with by the Court:—

A young man arrived at Wellington in quest of work. His uncle, desirous of giving him employment, put him on to drive a cart. The young man was paid full wages, but not being a unionist, his uncle was found guilty of a breach of award and fined £2 and costs.

An employer had on a Thursday engaged a unionist workman to commence work on the following Monday morning. On the Sunday forenoon, however, the workman informed the employer that, owing to illness in the family, he would not be able to fulfil

his engagement. As the employer required a hand to begin at 7 o'clock on the following morning, he was somewhat in a fix. The "employment book" could not be consulted until 9 a.m. on Monday, and unless he decided to allow a business engagement to be broken, his only alternative was to employ the first suitable man he could secure. He obtained a young man who, however, was not a unionist. Having been brought before the Court, the employer was fined £2 and costs.

A man, who was taken on by an employer as a casual hand, proved himself specially qualified for the class of work he was put to, but he was a non-unionist. The employment book was produced in Court and showed that there was only one member of the union who claimed to be proficient in the particular work required to be done, and this man, because he was inefficient, had been dismissed by the employer who had engaged the non-unionist. As the employer, however, was unable to satisfy the Court that he had consulted the employment book, he was held to have committed a breach of the award, and was fined.

Another case was that of a firm charged with employing a tailor who, at the time he was engaged, was not a member of the union. It appeared that some time previously the man had been president of the union, but had afterwards started business on his own account, and when engaged by the firm referred to, it was overlooked that his connection with the union ceased when he became an employer. A day or two after the man started work, the firm was visited by an Inspector of Factories. "You have got a man in your employ who is not a unionist?" said the Inspector to one of the partners. "No, I have not," was the reply. The Inspector then mentioned the name of the man. "Oh," said the partner, "he is president of the union." The mistake of the partner was pointed out, and the latter the same day, I believe, got the man to join the union. Notwithstanding this prompt rectification of the error, information was lodged against the firm for breach of award, and when the case came before the Court, a fine of £5 was inflicted. The firm, besides, had to pay a solicitor's fee of £2/2/-.

For some years past there has been considerable dissatisfaction among unionists at the Court's refusal to grant preference in every award. The unionists have also complained that the conditions under which the preference clause is usually granted are such as to make the clause of very little value to them.

Mr. Secretary Tregear, in his report for 1902, thus sympathetically writes:—

It (preference to unionists) has always been coupled with some compliance from the unionist side, e.g., that an employment-book shall be kept by the union and be open to employers, or that no prohibitive entrance fee shall be charged, &c. The unionist, who has to bear the worry, cost, &c., of disputes, and danger of offending employers, in order to better the condition of all workers should certainly have some slight advantage over the man who is quite willing to accept the improved circumstances procured for him by the energy and self-denial of others, but is unwilling to share either the expense or the peril. Unfortunately for the workers, the practical part of any "preference to unionist" clause is nullified by the restriction that it is only when all things are equal that preference is to be shown. As it lies entirely with the employer to say whether he considers one man equal to or better than another the "preference" clause in the award helps the unionist very little.

In 1905, Mr. Tregear returns to the subject: "There is a strong and persistent feeling existing among trade unionists that 'preference to unionists' should be made statutory, and that such preference should not be of a shadowy nature."

The demand made by unionists upon the Government to do its utmost to have compulsory preference made law has been very persistent. The late Premier (Mr. Seddon) was frequently waited upon on the subject, and in 1903 he promised to take the matter in hand. On February 10, at Wellington, he said: "With regard to preference of employment to unionists he would be quite prepared to ask Parliament to make it compulsory." At Napier, on March 13, he informed a deputation that "the Government had definitely decided to take steps to make preference to unionists compulsory."

Dealing further with the matter at Auckland on May 13th, he said that "he believed in organised labour, and he did not believe they could have a complete organised labour unless preference was given to unionists. Organised labour was a safeguard to capital. The non-unionists reaped the advantage without contributing anything, and it would be much better for everyone to be on the same plane; but there must be a safeguard, so that unionists could not shut out other men and do them injury. When the Act was first passed, it was administered on the principle of preference to unionists, but during the passage of the Amending Act through the Legislative Council, an alteration was adroitly made without being noticed. The position was that for a considerable time there had been preference to unionists, and there was no injury to capital. They were simply going back to that position. The Government intended to ask Parliament to give preference to unionists, safeguarded in such a way that there could be no abuse of the power given by the Legislature."

It was in consequence of such utterances by the Premier that the New Zealand Employers' Federation decided to issue a circular giving ten reasons why compulsory preference should not be granted. It was pointed out, among other things, that the unionists constituted only a small fraction of the general body of workers throughout the Colony, and that if the legislation proposed were given effect to, a small band of unionists would be able to rule the majority; that to deprive the Arbitration Court of its rights to grant preference would seriously lessen its influence and would remove a wholesome check upon unionism; that compulsory unionism meant increased cost of production, owing to the higher wages, shorter hours, and limitation of output; that manufacturers were, in some cases, able to cover increased cost by raising the prices of their productions and making the public pay the piper, but that the largest industry in the Colony, agriculture, could not so protect itself seeing that the prices of farm produce depended upon foreign markets; and that compulsory preference would specially affect retail traders, as a shop assistant must not only know his business, but also be trustworthy, and have a good appearance and good address.

The circular was widely distributed among business people, and copies were sent to the members of both Houses of Parliament.

The New Zealand Farmers' Union also strongly opposed the proposal of the Premier, and the following extracts may be given from a report prepared by the North Canterbury Executive of the Union:—

> With regard to the principle of compulsory preference, we are in entire agreement with the New Zealand Employers' Federation. We consider that they have rather under than over-stated the objections to the granting of this demand on the part of the Unionists. We believe such a preference to be unjust and altogether opposed to liberty and true democracy. The objections to preference are:—
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> 1. Though no one will deny the right of any section of the community to combine for its mutual benefit, or for the furtherance of its common interests, yet no section has, in our opinion, a right to demand special legalised privileges at the expense of the rest of their fellow workers, or to restrict, for its sole benefit, the reasonable liberty of the general public.
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> 2. Compulsory preference would penalise all non-unionists. It would place them in the unfair position of having to choose either to remain at a disadvantage as compared with unionists or to join an association against their inclination. The fact that only 14,100 wage-earners (exclusive of the Amalgamated Society of Railway Servants) are members of registered trade unions out of a total of 166,000 male wage-earners, make this demand still more unfair and altogether unreasonable.

3. In the past unionism appears to have aimed solely at increasing the privileges or wages of its own members, and has done nothing to earn specially favourable treatment from the country as a whole. So far they have made no attempt to justify such a claim, but appear to rely altogether on their power of intimidating the Government.

4. Continuous remunerative work is the first need of the manual worker. By making such continuity merely dependent upon membership of a union, and not, as at present, on a good reputation for work and character, would remove all incentive to efficiency, and must lead to the demoralisation of the worker.

5. If the preference clause is granted to unionist employees, it would be only fair and logical to grant the same privilege to unionist employers, that is to say, to prohibit any workman from continuing to work for a non-unionist employer, if a unionist employer required him.

6. The work of agriculture, dealing as it does with perishable commodities, in a most unsettled climate, requires, more than any other industry, absolute freedom of contract.

At the Conference of the Colonial Council of the Union, held in July, 1903, a resolution was unanimously adopted urging that

Branches of the Union throughout New Zealand should urge their representatives in Parliament to oppose any fresh legislation that may be introduced making it compulsory that unionists should have preference of employment in Arbitration Court Awards, and, that in order to carry out the desires as expressed by the various branches on the question, a deputation consisting of the President and members of the Council should wait upon the Premier, and represent the views of the Conference.

It is more than probable that this strong opposition against compulsory unionism from bodies representing practically the whole of the industries of the Colony had some weight with the Government, as in the Conciliation and Arbitration Amendment Bill of 1903, no provision whatever was made for preference as had been promised by the Premier. In the last stages of the Bill, however, and while the House of Representatives was in committee, Mr. Arnold, a labour member, moved that the following clause be inserted:—

Subject to the observance of any conditions imposed upon an industrial union by any industrial agreement or award, or by regulations, employers shall employ members of the industrial union in preference to non-members, provided there are members of the industrial union competent to do the work required to be done and ready and willing to undertake it.

This clause, at the time, was withdrawn, but two days later (October 15), Mr. Arnold moved that the Bill be re-committed for the purpose of considering the clause. In the course of his speech, Mr. Arnold said that his clause was "a preference clause pure and simple."

An Hon. Member: And compulsory.
Mr. Arnold: Compulsory, of course.

The House rejected the motion by 43 votes to 19, the majority including four Cabinet Ministers. The Premier and another Minister (Hon. W. Hall-Jones) were among the minority.

The attempt to carry such an important and far-reaching provision without having it first brought before the Labour Bills Committee for discussion and for taking evidence thereon, was strongly commented upon by the employers.

In 1905, another labour member (Mr. Tanner) made a similar attempt to carry the clause, as submitted previously by Mr. Arnold, in the Conciliation and Arbitration Bill of that year, but failed. The division showed that 17 were in favour of the clause, and that 32 were against it. The only Ministers who gave it their support were Messrs. Seddon and Hall-Jones.

In the session of 1906, while the Mining Act Amendment Bill was before the House in Committee, the Hon. A. R. Guinness (the Speaker) moved that the following new clause be inserted in the Bill:—"Employers who require men for employment in gold mines shall employ members of the industrial union competent to do the work and ready and willing to undertake it." The mover said that the clause had been suggested by the miners' unions of the West Coast, and he thought that, as the House had endorsed the general principle of preference to unionists, it should support its application to an industry which was dangerous to life and limb. The Minister of Mines thought that such a clause should be inserted in the Conciliation and Arbitration Act, and the leader of the Opposition pointed out that the usual provisions for the unions being open to all was not included in the clause, and this would enable the union to become a close corporation. Mr. Guinness then expressed his willingness to make the terms of the clause read similar to those provided by the Arbitration Court, but the House rejected the clause by 38 votes to 27.

The granting of preference, under certain conditions, in awards issued by the New South Wales Arbitration Court, engaged the attention of the Law Courts in 1905, with results satisfactory to the employers, but entirely disappointing to the unionists. The decisions of the Courts of Australia in connection with several matters arising out of the working of the Arbitration Act, show unmistakably that the Courts are determined to protect the common law rights of the people, and it has yet to be seen whether these rights will be as zealously guarded by the Courts of New Zealand, should the Arbitration Court, by any of its actions, appear to encroach upon them.

Clause 36 of the New South Wales Act provides that the Court of Arbitration may, in its award,

> Direct that as between members of an industrial union of employees and other persons offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal, and appoint a tribunal to finally decide in what cases an employer to whom any such direction applies, may employ a person who is not a member of any such union or branch.

The Arbitration Court made, at the instance of the Sydney Trolley, Draymen, and Carters' Union, in an award, dated 15th November, 1904, an order which was considered *ultra vires*. The order complained of provided that the Secretary of the Union, "whenever reasonably practicable, having regard to existing exigencies," was to be "notified of the labour required." The right of the Arbitration Court to insert a provision in a preference clause was nullified by the Supreme Court, before which the question was heard in March, 1905, and the Union at once appealed to the Federal High Court.

The contention of the appellants was that the provision, to which objection was taken, was necessary to enable the Union to get the full benefit of preference to unionists.

The High Court upheld the judgment of the full Court, and the remarks of the Chief Justice, as reported in the "Sydney Morning Herald" of June 20, 1905, are here given:—

> The Chief Justice, after stating the nature of the appeal, said the only question was whether the order was within the competence of the Arbitration Court. The Arbitration Act, as was pointed out in Clancy's case, was an Act in restriction of the common law rights of the subject. In Clancy's case the High Court also held that the Arbitration Court's jurisdiction did not apply to regulating the conduct of an employer after the employment terminated, or at hours when the employment of the man was not going on. Their attention had not been drawn to any provision in the Act that authorised the Arbitration Court to interfere with the freedom of action of the employer before the relation of employment existed. The moment of engagement was the first moment that the Act appeared to touch. The only provision that could be supposed to extend that power was that contained in Section 36 of the Act, upon which the appellants relied, which provided that the Arbitration Court in its award or by order might direct that as between members of an employee's union and other persons offering their labour at the same time such union member should be employed in preference to other persons, other things being equal. What they had to do was to construe these words. It was contended for the appellants that incidentally that clause authorised the Arbitration Court to make an order for the purpose of bringing about the result that members of the union should always be in a position to offer their labour at the same time as other persons, and it was contended that unless there was such a provision the main provision was nugatory. They had, however, to construe the words of the statute. It was observed that the power that was given to the Court to give that direction was limited to the case of members of a union "when offering their labour at the same time."

These words were the governing words of the section, and the Arbitration Court could not do anything more than was consistent with that condition unless the additional power it was asked to exercise was one that was necessarily involved in order to give effect to that. The principle at the basis of the appellant's contention appeared to be this: That the Arbitration Court might, for the purpose of bringing about the condition of things that members of unions and other persons might offer their labour at the same time, give a direction that the employer should give notice of some sort before he engaged anybody.

If such a provision were in the Act, expressly or implied, said Sir Samuel Griffith, the Arbitration Court could give any direction on the subject that it thought fit. It might prescribe the length of notice, the mode of giving it, the persons to whom it should be given, and in the exercise of its discretion on that subject it would have absolute power, and no Court would control it. Would such a power as that be consistent with the liberty of the subject, existing at common law, which was not expressly taken away by the Act? Such a condition would involve remarkable interference with the freedom of action of the employer in engaging a servant. In considering again whether such a principle was to be implied in the Act, it was important to bear in mind that it implied the discretion of the Arbitration Court was unlimited, and could not be controlled. Was it to be inferred, then, that the Legislature intended to confer such a power upon the Arbitration Court? He confessed that he could not see any foundation for the argument. The employers were free to conduct their business in any way they pleased, except in so far as they were controlled by the Arbitration Act. One condition laid down by the Legislature was that which directed that when unionists and other persons offered their labour at the same time the Court could order that the unionists should have the preference of employment, other things being equal. He confessed that he could not see by any necessary implication, or any principles known to the law, that that authorised the Court to give any direction to employers. That view was supported very strongly by the case of Rossi against the Edinburgh Corporation decided by the House of Lords in November last. He could find no authority, he knew of no principle, upon which the Arbitration Court could be held entitled to eke out what it considered a weak direction by giving an additional one. On the ground, therefore, that there was no power of the Arbitration Court to give notice to anyone he was of the opinion that that direction laid down in the award was beyond the authority of the Arbitration Court.

Another point raised, said the Chief Justice, was that, assuming a notice could be given, there was nothing in the direction to prevent the employers giving notice to other persons in addition to unionists. That was no doubt true, but all the other persons desirous of being employed were entitled to some consideration, and if the notice were directed to be given to one class that would be unfair to the others. There was, however, a good deal of force in the argument that the employer was free to give notice to anyone he pleased. He did not want to address himself to this point. For the reasons he had given he thought the majority decision of the Full Court was right.

This decision was regarded by the Sydney Trades Hall officials as a serious set-back to unionism. It meant that although the Arbitration Court could award preference to unionists, it could not "any longer make regulations for carrying out the principle."

The New Zealand unionists may be expected to continue their demand for preference. At their Annual Conference in 1906, the representatives of the Trades Councils went so far as to demand "unconditional statutory preference to unionists." This demand was repeated at the Conference held in 1907. Unconditional preference means, of course, preference to unionists without any of the conditions generally provided for in the awards of the Court. But, if the views of a labour leader, given at Wellington in 1906, may be taken as voicing the general opinion of unionists, something worse than compulsory preference is to be insisted upon. The labour leader said: "Say they had 1000 men employed on the Wellington wharves, of whom 700 were unionists, and 300 non-unionists. Immediately they had compulsion these 300 would come in if they desired to get employment; but the employer had the same ground for operation as he had before they joined, when he took his choice, and thus the preference benefit immediately went. That could only be overcome by making a certain condition *giving the union the right of excluding anyone it thought fit.* They must have the right to exclude, because if they got all the men into the ranks of the union no preference could exist."

It has been quite apparent to both employers and unionists for some time that statutory preference, with the membership of the unions open to all, would lead to no preference whatever. One of the leading New South Wales journals thus puts it: "Preference to an open door union is nothing. Should any effort be made to realise upon it, as any worker in the industry can join the union, naturally all will do so, rather than be debarred from working at their regular vocation, and organised labour is just where it was when there was no 'preference.'"

The same journal further remarks:—

> If unions could be kept fairly close corporations, and have the sole right of doing work, pressure from two sides would burst the whole system. The employers would find themselves subjected to intolerable demands for higher wages and easier terms, and if they were unable to escape in any other way would, in many cases, go out of business before incurring the loss that would stare them in the face in the near future. Unorganised labour, which did not belong to a union, and could not get there, would constitute an equally serious menace, because its position would irresistibly appeal to public sympathy. No community which had any sense of fairness would tolerate the injustice that must be done where real preference to unionists existed, and non-unionists were treated as an outcast class with no right to work at trades in which unionists competed. No community indeed, could afford to risk the consequences of thus interfering with men's freedom to earn their livelihood.

There can be no doubt that the goal at which the labour leaders are aiming is an unconditional preference with the unions as close corporations. If such a consummation were ever realised, it would make the unions complete masters of the situation, and cause the position of the employer to be simply intolerable. It is hardly conceivable, however, that the New Zealand Parliament will ever grant such a preference. Following the example of the labour leaders in Australia, a section of the labour party in New Zealand has formed an Independent Political Party, which hopes to be able to send to Parliament men who will be able to get their demands given effect to. These labour politicians are not satisfied with what the Liberal Party, at present in power, is doing in their interests. That party is going too slow for them, and hence an attempt is to be made to have it replaced by another having a strong socialistic flavour.

The labour unions make frequent representations to the Minister for Labour on the subject of preference, and the following correspondence, which passed between the Secretary of the Christchurch General Labourers' Union and the Minister, early in 1907, will show the position the latter has taken up in his own Department in such a matter. The General Labourers' Union wrote thus to the Minister: —

I am instructed by my Union to communicate with you regarding your utterances to a deputation of Unionists that waited on you recently in Wellington regarding the appointment of scaffolding inspectors. We do not wish to enter into the question of the inspectors' qualifications. In your answer you said: "All things being equal, a unionist would get the preference if the Minister knew him to be a unionist, but no applicant would be asked whether he was a unionist or not." Now, my union would like to know how you can take up this attitude. You are in favour of preference to unionists, you have promised to introduce a measure in the House to provide for compulsory preference to unionists, and still you refuse to recognise the principle in your Department. How can you know whether a man is a unionist or not unless you ask him the question "Are you a unionist?" If preference to unionists is good for the private employer it ought to be good for the Government, and we think you should set an example by giving preference to unionists in your Department.

To this the Minister replied:—

I have to acknowledge the receipt of your letter of the 18th ult., communicating with me on behalf of your union, respecting my remarks to a deputation from the Wellington Building Trades Labourers' Union, in regard to the appointment of scaffolding inspectors, more particularly in regard to certain remarks respecting preference to unionists. In reply to your letter, I have to say that I have nothing to add to my published statement in regard to the matter.

In reply to a deputation representing the Trades Councils' Conference, at Wellington, on the 4th September, 1907, the

Minister was very emphatic in his refusal to entertain such a proposal as the granting of unconditional preference to unionists. He said that

> No Parliament would give any body of men the right to make rules on any lines they pleased. They would never get preference on any other lines than that given already. The door would always be left open. Parliament . . . would never grant a body of men the power to make rules taking away from any other body of men the right to live.

It would be hardly fitting to conclude this chapter without giving opinions, taken from various sources, on the question of preference to unionists.

Lyman Abbott says:—

> If any organization undertakes to prevent any man from working when he will, for whom he will, and at what wages he will, that organization violates the essential right of labour. It is not primarily the enemy of capital—it is primarily the enemy of Labour,—for every man has a right to work, and every man has the right to the product of his industry. Imagine, for a moment, that any man should propose to place a law on our Statute Books providing that no man should work in any special industry unless he belonged to some special guild. Not for one instant would he have the support of the people; not for one instant would he have the support of any free people.

Dr. and Mrs. Webb, who visited New Zealand some years ago, write:—

> Any restriction which prevents an employer from filling all his vacancies as they occur, by selecting the most efficient operatives, whenever he can find them . . . lowers the average of quality among the successful competitors. The same influence deteriorates the men already in the trade . . . The more restricted the field . . . the lower will be their average level of capacity.

The following is from a clause in the award of the Anthracite Coal Strike Commission (U.S.A.):—

> That no person shall be refused employment or in any way discriminated against on account of membership or non-membership in any labour organization, and that there shall be no discrimination against or any interference with any employee who is not a member of any labour organization by members of such organization.

In the reasons given by the Commission for its finding, the following passage occurs:—

> Our language is the language of a free people, and fails to furnish any form of speech by which the right of a citizen to work when he pleases, for whom he pleases, and on what terms he pleases, can be successfully denied. The common sense of our people, as well as common law, forbids that this right should be assailed with impunity. All this seems too plain for argument. Common sense and common law alike denounce the conduct of those who interfere with this fundamental right of the citizen. The assertion of the right seems trite and commonplace, but that land is blest where the maxims of liberty are commonplaces.

In the report of another labour case in America, the following opinion is cited:—

The principle upon which the cases, English and American, proceed is, that every man has the right to employ his talents, industry, and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy.

When the New Zealand Trades Councils in 1906 declared for "unconditional statutory preference," the Dunedin "Evening Star" wrote:—

We were under the impression that this was a free country, and that an employer could employ whom he pleased, subject to the conditional clauses of preference occasionally introduced into awards. We do not approve of the preference to unionists in any form; but in the form proposed it would simply be nothing less than unmitigated tyranny. . . . Every worker would be at the mercy of his union, and all workers would have to join a union. . . . Unconditional preference simply means compulsory unionism, with all that this involves, and would end in labour unions becoming one gigantic Labour Trust. If to this were added what some labour leaders are contending for in the Home Country—freedom from legal responsibilities and immunity of their funds—labour unions would dominate the State, and constitute a tyranny as dangerous to the community at large as any autocracy.

Mr. Geo. T. Booth, Christchurch, in an address to the members of the Canterbury Employers' Association, in 1901, said:—

Is there any reasonable or sufficient justification for the preference claim on grounds of principle or of expediency? . . . If a man can be said to possess any natural or inherent right at all it is the right to work for his living, to exercise such capacity as nature has bestowed or training developed, in maintaining himself and those dependent upon him. . . . Yet this very right is attacked by the unionist claim for preference. In effect, the unionists say to the non-unionists: You have no right to work for a living unless you pay dues to a trade-union, subscribe to its rules, and submit yourself to the dictation of its leaders. You shall sink your individuality altogether. You shall regulate your activities at our bidding. You shall work just so hard and so long as we order you, and you shall stand idle when it suits us.

In his recently published book, "The Labour Movement in Australasia," Mr. Victor Clark, of the Labour Bureau, Washington, U.S.A., says:—

The most important objection to granting preference to unionists arises from the organic connection between the unions and the political labour party. Preference to unionists is preference of employment to members of a political organisation. Under the secret ballot no union can force a man to vote the labour ticket, but it can coerce members by effective moral duress to give financial support to the party and otherwise obey its dictates.

No unionist who seeks to debar a non-unionist from obtaining employment can claim to be a believer in the golden rule, "Do unto others as you would have others do to you." New Zealand unionism, indeed, appears to have no place in its moral code for either the golden rule, or any of the other precepts contained in the Sermon on the Mount.

CHAPTER XI.

APPRENTICES.

The provisions for apprentices in the awards of the Court are far from being uniform. In some cases the wages and term of service only are fixed; in a large number of others it is directed that the apprentices are to be legally indentured, and that the number of them is to be limited; while in others a special apprentice clause is inserted providing for wages, period of apprenticeship, transference to another employer, dismissal for cause and the furnishing of a certificate to an apprentice for the time served. The chief reason for this variation, as for variations in other provisions in awards, is explained by the fact that sometimes the employers and workers agree when before the Court, as to the conditions which should be fixed, and this the Court usually confirms. At other times, when there is a difference of opinion between the parties, the Court directs what it thinks best in the circumstances.

Where the indenturing and the limitation of apprentices are provided for, the clauses may read as follows:—

1. All boys working in any branch of the trade shall be legally indentured as apprentices for the term of five years, but every boy so employed shall be allowed three calendar months' probation, prior to being indentured, the aforesaid three months to be included in the apprenticeship.
2. The proportion of apprentices to journeymen employed by any employer shall not exceed one apprentice to every three journeymen or fraction of three.
3. For the purpose of determining the proportion of apprentices to journeymen in taking any new apprentice, the calculation shall be based on a two-thirds full-time employment of journeymen employed during the previous six calendar months until a shop has four apprentices, and then the proportion of apprentices to journeymen shall be calculated on a two-thirds full-time employment of journeymen employed for the previous twelve months, or one apprentice every two years.
4. Arrangements between employers and apprentices existing at the time of hearing of this dispute in the Court shall not be prejudiced, but any employer then employing any apprentice otherwise than under indentures must procure such apprentice to be indentured within three calendar months after the coming into operation of this award.
5. If any employer shall from any unforseen cause be unable to fulfil his obligation to an apprentice, it shall be lawful for such apprentice to complete his term with another employer, notwithstanding that such employer has already the full number of apprentices allowed by these conditions.

In some awards a further provision is made for an apprentice to work as an improver for a term of twelve months after his term of apprenticeship has been completed.

The proportion of apprentices to journeymen varies. It may be one to every journeyman (as in the plumbing trade), one to every two men, one to every three men, or one to every four men. An employer's son, who is an apprentice, is taken into account where there is a limitation of apprentices, unless a special provision to the contrary is inserted. The following is from a clause in the New Zealand Federated Boot Trade Award:—"Foremen or employer's sons are not eligible for membership to any union of workmen, and are not restricted by any clauses of this award."

Up till a few years ago the building trade was almost the only trade in which there was no limitation to the number of apprentices. Both sides had apparently agreed to this. Lately, however, some other trades have had the restriction as to the number to be employed removed.

For some years past the old system of indenturing apprentices has been regarded with great disfavour by many employers. Time after time the matter was brought before the Court, and the latter prepared an apprentice clause, to take the place of an indenture, and this was inserted for the first time in the Auckland Engineers' Award, dated 15th May, 1905. It has since been included in other awards, with some slight modification. In its original form it read as follows:—

1. Any employer taking an apprentice to learn the trade shall be deemed to undertake the duty which he agrees to perform as a duty enforceable under this award, and shall pay such apprentice not less than the undermentioned rates of wages—namely: For the first year, 5s per week; for the second year, 10s per week; for the third year, 15s per week; for the fourth year £1 per week; for the fifth year, £1 5s per week.

2. The period of apprenticeship shall be five years, but three months' probation shall be allowed the first employer of any apprentice to determine his fitness, such three months to be included in the period of apprenticeship.

3. At the end of the period of apprenticeship, the employer shall give the apprentice a certificate to show that he has served his apprenticeship. Should the employer, at any time before the termination of the apprenticeship, wish, for any reason, to dispense with the services of the apprentice, he shall give him a certificate for the time served, and procure him another employer carrying on business within a reasonable distance of the original employer's place of business, who will continue to teach the apprentice, to pay him the wages prescribed by this award according to the total length of time he has served, and generally to perform the obligation of the original employer: provided that it shall not be obligatory upon an employer to find the apprentice another employer if he shall so misconduct himself as to entitle the employer

to discharge him, but he shall give him a certificate covering the time actually served.

4. An employer taking an apprentice shall give notice thereof and the name of the apprentice to the Inspector of Factories within one week after the expiration of the period of probation, and an employer transferring an apprentice to another employer shall, similarly, within one week thereof give notice of such transfer to such Inspector.

5. An employer shall not be deemed to discharge his duty towards his apprentice if he fails to keep him at work owing to slackness of work, but such slackness may form a proper ground for transferring him to a master willing to undertake the responsibility of teaching him.

6. When an apprentice is discharged for cause, the employer shall send notice of the discharge and the cause thereof to the Inspector of Factories.

7. Existing arrangements with or relating to apprentices now serving an employer wishing such arrangements to continue shall forward the names of his present apprentices to the Inspector of Factories within one month after the filing of this award.

The following remarks were appended to the award in which the clause appeared:—

There was no dispute as to the proper wage for competent men, but there was a good deal of discussion as to apprentices, the union claiming that they should be bound by indentures, and the employers urging that this had never been customary and would prove ineffectual. The Court has decided to adopt a new set of clauses as to apprentices, which it is hoped will render the position more satisfactory and prove advantageous to both parties in connection with this trade.

In a number of cases this clause has been agreed to by the workers' unions, and it appears to have given no dissatisfaction to either party.

The indenturing system has been found to be, in some respects, so unsatisfactory that several employers' associations have obtained legal opinions on the subject. These opinions, which are based on decisions in England, may be briefly summarised:—

1. An infant (a person under 21 years of age) is "incapable of contracting himself out of his acquired rights or subjecting himself to a penalty" and "if there be a stipulation in a contract entered into by an infant so much to the detriment of the infant as to render it unfair that the infant should be bound by it, then the contract cannot be enforced at all."

2. That no indenture would be valid which contained a clause that gave an employer the power to deduct wages for idle time, sickness, breakdown of machinery, or for a holiday given by the employer to the apprentice.

3. That "an agreement which compels an infant to serve at all times during the term but leaves the master free to stop his work and his wages whenever he chooses to do so, cannot be considered as beneficial to the apprentice. It is inequitable and wholly void."

4. That in the old days the infant would have lived in the master's house, and the master would have clothed the infant; but in the present day the master does not desire to have that obligation, and he therefore stipulates to pay wages, so that so far as the father or mother or the people who are responsible for the infant are concerned, they at all events may be relieved from the obligation of having to keep the infant while he is serving the master for nothing. Therefore they stipulate that the infant should be paid wages, and "thereupon those wages come to their hands as a small matter of course and they feed and clothe the infant."

The New Zealand Master and Apprentice Act, 1865, is similar to the Victorian Act passed in 1864. It differs from the latter in one important respect. While clause 9 provides for an apprentice to be taken by indenture over the age of 12, the term is not to exceed five years, and has to expire when the apprentice attains the age of 19, or (if a female) marries with legal consent. The Victorian Act, on the other hand, allows the term of apprenticeship to be between the ages of 12 and 21, the limit being 7 years. In New Zealand, it will be seen, that should an apprentice be indentured for a term of five or six years at the age say of 15, he cannot legally be compelled to complete his apprenticeship; he can leave his employer as soon as he attains the age of 19. As a matter of fact some youths, who are conversant with the provisions of clause 9, leave their employers at the age mentioned, notwithstanding that they have not completed their contract. As the tendency now is to keep boys at school as long as possible, owing, there can be no doubt, to the free places provided for them at secondary schools, and to the encouragement given them to attend day technical schools, it seems absolutely necessary that the law should be altered so that, if the indenturing system is to be recognised at all, the apprenticeship may be extended to the age of 21. At the present time any employer who, by an award of the Court, has to indenture his apprentice, and is, of course, fined if he fails to have the deed duly executed, is placed in the peculiar position of having to recognise another law which, if taken advantage of by the apprentice, may prevent the award from being faithfully carried out.

Some other provisions in the Master and Apprentice Act may be referred to. Clause 10 provides that the indenture must be executed by the parent or guardian of the apprentice, or if the apprentice has no parent or guardian, then by two justices.

The indenture must "contain such covenants and provisoes as are usually inserted in the indentures of such apprentices in England." This latter is understood to mean covenants and provisoes usually inserted in the indentures at the time the Act was passed. It is believed that in the forms of 40 years ago there is no provision for deduction of wages on account of absence through sickness or incapacity, and no power to dismiss is expressly given. According to clause 12, an apprentice may be assigned by his master, or, on his death, by his executors, to another person with the consent of two justices, and under clause 13 a master incurs a penalty of £10 if he puts away or transfers or in any way discharges his apprentice without the consent of the two justices.

In clause 15 it is provided that any difference arising between a master and his apprentice may be brought before two justices, who may make such order and direction as the equity of the case shall require. If a master ill-treats his apprentice, or neglects his duty towards him, he may be fined.

Clause 17 directs that an apprentice guilty of breach of duty, disobedience, or misbehaviour, may be punished by solitary confinement for three days, unless under 14 or a female.

Although few cases arising out of the Act have come before the Court, it would, according to legal opinion, be unsafe to make use of an indenture which was not in strict conformity with the terms of the Act. Of course a clause may be inserted in an indenture expressly exempting the parties from the provisions of the Act. In that case, as has been pointed out, "there would be no penal process (such as an appeal to justice) available to compel the apprentice to perform his obligations." The only remedy for loss sustained through the apprentice's defaults would be by action against the parent or guardian. The employer, however, would not be bound by the form of indenture in use at the date of the Act, although it would be necessary for him to have a form which could not be adjudged unfair to the apprentice. A provision, giving the master power to dismiss for gross misconduct, is, it seems, inserted in the modern English forms, and the opinion has been given that such may be adopted. There might also, it is said, be inserted in forms not fettered by the Master and Apprentice Act a provision "for terminating the apprenticeship on 14 days' notice if business is suspended or goes down from causes beyond the master's control," and one for withholding wages on days on which the business is at a standstill through accident, "provided the apprentice is left free

to obtain employment elsewhere in the interim." It is further stated that it may be stipulated in the contract that "for the days during which the young person wilfully absents himself a proportionate part of his weekly wages may be withheld, but no deduction from wages already earned can be made by way of compensation." Sickness is not regarded as wilful absence.

It may be mentioned that for some years past indenture forms, containing a clause exempting the parties from the Master and Apprentice Act, have been used, but it is fast becoming apparent to employers that the indenturing system should be discouraged, and that the best possible substitute for it is the apprentice clause adopted by the Arbitration Court, given above.

The provision in awards for the limitation of apprentices has frequently been the subject of discussion. Generally speaking, employers have not willingly agreed to any limitation; some, indeed, have always been strong opponents of such a provision. The workers' unions, on the other hand, have generally insisted on strict limitation. Their chief objection to allowing employers to have a free hand in the employment of apprentices is that the former have, when such freedom has been allowed, employed the latter in such numbers as to be unfair to the journeymen. There can be no doubt that in some cases employers have employed too many youths, their object probably being to have as cheap labour as possible, but whether, because this has taken place, it is wise to put a general limitation on the number to be employed, is open to serious question. In trades where skilled adult labour is plentiful, most employers would, unquestionably, prefer to employ it than to have a large number of apprentices. No employer is truly acting in his own interests who employs an undue proportion of apprentices. The demand for limitation has always appeared to the more thoughtful and fair-minded employer to be economically unsound. It appears to be made, indeed, without any consideration of its economic side. At a general meeting held in May, 1902, the Canterbury Employers' Association discussed at some length the apprentice question. It was held that it was the inalienable right of every boy to have the opportunity of learning a trade, and that it was not fair that a large number of youths should have to stand aside and help to swell the ranks of unskilled labourers. Figures were submitted showing that in 1902 the number of boys in factories between 15 and 20 who were available to learn trades was, in round figures, 40,000. It was considered that, at the lowest estimate, 4800 of that number would want to learn trades, and

that the proportion to journeymen (1 to 3) which the labour unions generally insist on, would absorb only 1600. What was to become of the remaining 3200? Figures were also cited showing that the number of hands in the factories had, between 1897 and 1900, increased by several thousands every year, and that it was imperative that the number of boys who should learn trades should be increased rather than restricted, so that an ample supply of skilled hands might always be available. It was stated that the only trade union known to insist on having two apprentices to one man was that of the Manchester Cotton Spinners, and that this union, which had abandoned the traditions of restriction, had been not only able to maintain good wages, but also the efficiency of the workmen. One of the speakers said: "I am not at all sure whether it has not been the action of the unions in imposing restrictions upon boys that has been one of the compelling forces to make employers improve their processes and introduce labour-saving machinery. If the labour is to be restricted, then we must get machinery that is not restricted. . . The statement that the apprenticeship system is becoming a thing of the past is not merely an expression of opinion on the part of the employer. It is a deliberately stated and carefully thought-out conviction of people who have taken the greatest pains to investigate the condition of employment throughout the labour countries of the world, and who have very intense sympathy with the trade-union movement. Professor and Mrs. Webb say that most of the unions in England have abandoned all attempt to restrict apprentices, and that a majority of unionists are employed in trades in which no restrictions exist so that you will see that the New Zealand Court of Arbitration, in its wisdom, is inclined to throw us back to a condition of things in respect to apprentices, which the world has long outgrown."

So far as has been reported, the greatest trouble which has arisen through the limitation of apprentices by the Arbitration Court is that which took place some years ago in connection with the Canterbury Tailoresses' Award. In this award one apprentice was allowed to three operatives in the coatmaking department, and one to four operatives in the other departments. The award had not been long in force when it was found that the allowance of apprentices was quite insufficient for the requirements of the clothing trade in Canterbury. The Kaiapoi Woollen Company, which does the largest clothing trade in Canterbury, especially suffered for want of hands. From information which I obtained

early in 1903, it appeared that the Company found it absolutely necessary, if they were properly to carry on their clothing business, to employ throughout their establishment considerably more apprentices than allowed. The Company, it seems, could not obtain trained hands, and it decided to take on apprentices and train them. The Tailoresses' Union called upon the Company to discharge the apprentices employed in excess of the number allowed, but this the Company refused to do. The Company pointed out the serious results which would happen to its business if it was not allowed to employ as many apprentices as it required, and that if the Union pressed the matter the Company would have to import skilled hands from Australia. The Union, rather than have any importation of labour, agreed that the Company should employ as many apprentices as it required. This agreement was arrived at, I believe, in January, 1903, but about eighteen months afterwards the Union changed its mind on the subject, and requested the Company to take on no more apprentices to coatmaking until the proper proportion had been arrived at. The Company, however, retained its apprentices, and the Union lodged information against the Company for breach of the award. The charge was heard before the Arbitration Court in June, 1905, when the solicitor for the Company stated that the latter had found it impossible to do its work properly without employing 30 apprentices more than allowed by the award. The Company was prepared to take on as many operatives as could be sent to it. Some operatives had been obtained from Australia, and when the Union was notified that the Company intended importing these, the Union made no objection. The Union had since, however, attempted to make political capital out of the action of the Company. In the circumstances, the solicitor asked the Court to leave the position unchanged until the award under which the Company was working was revised. In giving the decision of the Court, the President (Mr. Justice Chapman) said that if the Court allowed that the Company had been justified in acting as it had done, the parties to other awards in different places would doubtless consider the advisability of applying for a similar exercise of benevolence from the Court. "The Court had no such power, and it would be a bad thing should an impression be allowed to go forth that the Court was ready to make such temporising orders." A fine of £5 and costs was imposed on the Company.

The sequel to the action taken by the Union will be found in the following letters written by the Kaiapoi Woollen Company a few days after the case was decided by the Court:—

(To the Editor of the "Press.")

Sir,—You may have noticed that at the present sittings of the Arbitration Court we have been fined for employing an excess of apprentices. In consequence of this action of the Court we have been compelled to discharge from our employ 28 girls. As a good deal of comment is being made upon our action, and some misunderstanding exists, we take the liberty of sending you a copy of the letter we have sent to the parents of the young people affected, which fully explains the circumstances of the case, and may be of some interest to you.—Yours, etc.,

P. HERCUS,
Manager Kaiapoi Woollen Co., Ltd.

(Copy.)

Dear Sir,—We regret to inform you that we are compelled to dispense with your daughter's services in our factory, and we have to-day given her a week's notice of dismissal. We have no fault to find with your daughter individually, and we are also exceedingly sorry that she has to leave with her apprenticeship incomplete. We have at present abundance of work for her and the other young people affected, and in order to fulfil our numerous contracts and obligations, her services are urgently required by this Company. We were, however, fined by the Arbitration Court, at the instance of the Tailoresses' Union, for employing an excess of apprentices over the number allowed by the award of the Court, and we have no option but to discharge these apprentices in question, 28 in all. We find skilled labour in this trade extremely difficult to obtain, and the proportion of apprentices allowed in our award is quite insufficient to supply the needed experienced workers. Some months ago, by the consent of the Union, in order to avoid the necessity of importing labour, we engaged a number of apprentices in excess of the award. This consent was withdrawn a short time ago by the Union, and an information was laid against us by the officials of the Union, and proceedings taken before the Arbitration Court with the result as stated above. We asked the Court to stay its hand for a few weeks, as an application for a new award will shortly come before the Court in Dunedin, when the apprentice question could be reconsidered. This would have prevented the necessity of dealing at present with the matter, and in the meantime the term of apprenticeship of several of the girls would have expired, but the Court decided it could not adopt any temporising method such as this. With great regret, therefore, we find there is no alternative but to dismiss all the apprentices affected by the judgment of the Court.

Yours faithfully,
THE KAIAPOI WOOLLEN CO., LTD.

Just before the case above referred to was heard by the Court, a deputation from the Tailoresses' Union waited upon the Premier and stated that the Kaiapoi Woollen Company had discharged a large number of its hands in order to make room for tailoresses imported from Australia. The letter which the Company wrote to the Premier in reply to the representation

made to him by the Union, gives such a complete explanation of the position in which the Company was placed, owing to the want of the necessary workers to enable it to carry on its business, and also shows how inexplicable the policy of the Union was towards the Company in connection therewith, that the communication is here given in full:—

Dear Sir,—We have noticed the report in the "Lyttelton Times," of June 10th, of a deputation from the Christchurch Tailoresses' Union, which waited upon you in Christchurch regarding the introduction of certain factory operatives from Australia by this Company. We understand that before going further in this matter, you would desire to have before you some statement from us.

In reply, we have to state that assertions made to you by the members of the deputation, that in consequence of the engagement of some tailoresses from Australia, a large number of local hands had been dismissed, also that we had offered to a section of our operatives wages below the minimum wage fixed by the Arbitration Court award, are absolutely untrue, as can be proved by reference to the books of the Company. As a matter of fact, only one hand has been dismissed from our clothing factory during the period alluded to, and that for incompetency.

The woollen industry of the colony, after a long and unbroken run of prosperity for many years, has been brought more keenly into competition of late with imported clothing, from countries where other textiles are available than those made from pure wool alone, and where labour is cheaper, and methods of manufacture more economical than those we have been accustomed to in New Zealand. The abnormal rise in the price of wool has severely emphasised this difficulty, and has given New Zealand woollen and clothing manufacturers an anxious time. To maintain our position against imported goods, two courses only appeared open to us, either to obtain increased protection through the Customs or to reduce the cost of local production. This company does not advocate the imposition of a higher tariff than the present one; we do not cry out for increased protection, preferring to set ourselves to the task of improving our processes of manufacture, and by introducing the most up-to-date machinery in the world, and by the use of more expeditious methods of making up clothing, thereby to check the inflow of importations, and extend the scope of our industry. These were laudable objects, and should command the sympathy and co-operation of the workers affected, but we regret to say that this has not been accorded to us.

The deputation which waited upon you in Christchurch was composed of the president, ex-president, vice-president, and secretary of the Tailoresses' Union here, and their action was taken professedly in the interests of local labour. At the present sittings of the Arbitration Court, an information was laid against this company by the officials of the Union, for breach of award, and we were fined by the Court £5 and costs, for employing some apprentices in excess of the award of the Court. No action appears to have been taken against the Union, who were a party to the breach. As the result of this prosecution by the Union, we have, most reluctantly, been compelled to-day to discharge 28 young people, and to deprive them of their means of livelihood, and the opportunity to complete their apprenticeship to an honest trade. The circumstances under which the majority of these young people came to be engaged are these: Nearly two years ago, the local scarcity

of coat hands was so acute, caused partly by the limitation of apprentices under the award of the Arbitration Court, that we found then we should be compelled to import certain skilled labour, unless we could arrange with the Union and take on more apprentices than the award allowed.

The Tailoresses' Union then agreed to this course being followed, and under their permit a larger number of apprentices than the award allowed were engaged. This permit was subsequently withdrawn, and the proceedings instituted, to which we have referred, with the result that 28 girls, the majority of whom were engaged during the currency of the permit, and several of whom had only a few weeks of their time to run, had to be dismissed.

When the permit to engage the necessary apprentices was withdrawn last year, the necessity of having more hands in our coat department again became pressing, and we used every means possible to secure the workers necessary to enable us to carry out our contracts and obligations. In twelve weeks we spent over £14 in advertising throughout the whole colony for experienced tailoresses, with very poor results. We also made application to the secretaries of the Dunedin, Christchurch and Wellington Tailoresses' Union, who advised us of their inability to secure the necessary number of hands. About this time excessive competition and increasing importations had borne in on us the necessity of adopting improved and quicker methods of manufacture, and to provide for both necessities, in January of this year we engaged from Australia two men and ten women, who are now working for us. The introduction, with the assistance of these workers, of an entirely new system to our factory, necessitated re-organisation, but the workers were paid full average rates, which received the approval of the local inspectors.

The re-organisation of the coat department was of an expensive and drastic nature, taking several days to adjust, and we naturally chose a slack time to effect the change, but within a short time all the suitable operatives were working again under the new system. No hands were dismissed in consequence of the imported workers, no local labour was displaced by our action; on the contrary, by the introduction of new methods, we hope shortly to largely increase the extent and variety of our manufactures, thereby largely augmenting the number of our operatives.

The deputation asserted that while we were advertising for new hands, some of those upon the Company's books were not fully employed. While this statement contained the truth, it did not represent the whole truth, and the effect was to mislead you and create a wrong public impression.

In the making up of ready-made clothing, there are, among others, six distinct classes of female operatives employed, viz., coat, vest, and trousers' machinists, and coat, vest, and trousers' finishers. All of these six branches of the trade are quite distinct from each other, and a separate apprenticeship to each is required. In our factory it is unusual for hands to work out of their own department, and they can rarely be changed from one class to another. Hence we are often rushed in one department and very short of hands there, while in another department there is not much doing, but the hands are not interchangeable. For instance, at this very time we are very short of coat machinists, and are advertising for such, while our coat finishers are not fully employed, and cannot become very busy again until these machinists are secured. Therefore it is possible for temporary suspension, not necessarily arising from want of work, to become necessary in any department at any time, and the shortage of hands in one branch

must result in delay to others. At the same time any suggestion to reduce the hands in such branch to equal proportions could not be entertained, as the normal requirements of the factory demand increased, not decreased, strength. In this way we explain that while one class of operatives may be awaiting full employment we are unable to provide it for them in many cases for the lack of necessary workers in another branch. For instance, we could engage to-day fifty machinists in various departments of our industry, and we are unable to obtain them, while it may be quite possible that in other departments the workers are not being fully employed.

We trust in thus putting our side of the case before you as clearly as possible we have not trespassed too much on your attention. We regret that our action in introducing trained specialists who could not be obtained within the colony, and who were required to instruct and train the local workers into methods of work, unfamiliar to them, but necessary to the preservation of the industry, has been misunderstood and misrepresented. We can assure you that every process that will cheapen the cost of production, and maintain at the same time the high quality of New Zealand woollen manufactures is absolutely necessary to enable us to check the increasing volume of importations, and every assistance should be afforded us in doing so.

We may add in conclusion, the statement made to you by the deputation had been previously contradicted by us in the local papers, so that the persons making those statements are without excuse. We think the Act was never intended to restrain trade and the extension of our local industries.

We have the trade—we want the workers. The Union cannot supply, and we are not allowed either to import or train them. The importance of the question is our apology for the length of this communication.—Yours, &c.

THE KAIAPOI WOOLLEN MANUFACTURING CO., LTD.,
G. H. BLACKWELL,
Chairman of Directors.

The unfortunate experience of the Kaiapoi Company in regard to its apprentices must have made some impression on the Arbitration Court, as when, in December, 1905, the Court made a new award (which applied to the Otago, Canterbury, and Wellington districts) no limitation whatever was put upon the number of apprentices to be employed. The same provision was inserted in the next award, made in April, 1907. This award, it may be stated, embodied, *in toto,* an agreement arrived at between the Union and the employers. Lately, I believe, the relations between both parties have considerably improved, and it will be a good thing for the industry if this state of things continues.

It was predicted some years ago that the limitation of apprentices in certain industries would cause a shortage of skilled hands in course of time. So far definite information as to whether this prediction has been fulfilled or not is not available, except in one case. I am informed that one large

concern which has suffered for some time for want of skilled workers attributes the shortage largely to the limitation put upon the number of apprentices five years ago. There are other trades which are to-day largely handicapped through the want of skilled hands, and it is probable that the Government may be asked to assist these trades in bringing into the Dominion the labour required. Although, except in the case already quoted, I am unable to state to what extent the shortage of labour may be due to the restriction of apprentices, it is reasonable to assume that in those trades in which a limitation of apprentices has been in force for some time, and in which there is now a shortage of journeymen, this shortage would, at any rate, have been considerably lessened if there had been no such limitation.

CHAPTER XII.

HOLIDAYS.

The particular holidays to be observed are provided for in each award. Those fixed for one award may vary considerably from those fixed in another. As is the case in other matters, the holidays are often agreed upon by both sides. Each provincial district has some special day (such as the anniversary of the province) which many of the public observe as a holiday, and this day is included in the awards of some trades. The number of holidays fixed vary from 3 to 10 or 11. There are six holidays provided for in the Factories Act, namely, Christmas Day, New Year's Day, Good Friday, Easter Monday, Labour Day, and the Birthday of the reigning sovereign. Many employers, especially those engaged in skilled trades, regard these holidays as quite sufficient. It may be remarked that the Factories Act holidays apply only to women or boys under eighteen years of age, and no deduction is allowed to be made from the wages of those workers for such holidays. In nearly every award of the Court it is provided that an overtime rate shall be paid for any work done on holidays. The rate paid varies from time and a quarter to double time. Employers, therefore, object to the number of holidays being increased, as it means extra cost when work is required to be done on any of these days.

In some awards payment for holidays is provided for, but this happens chiefly in cases where the calling is not of actually a producing nature, and where the actual working hours are longer than those in skilled trades. Take for example, the occupation of a carter or of a grocer's assistant. Under the Canterbury Drivers' Award, the employee is paid for the following holidays:—New Year's Day, Good Friday, Easter Monday, Prince of Wales's Birthday, Labour Day, Christmas Day, and Boxing Day. "When any holiday falls on a Sunday, the day proclaimed or generally held as a holiday" is to be observed. The men are paid overtime rates for work done on any holiday, and no deduction is made for their wages for "wet or bad weather." The men are, however, not paid for the time occupied in attending to the horses. The Canterbury Grocers' Award contains the following holidays, for which the assistants are paid:—New Year's Day, 2nd January, Good Friday, King's

Birthday, Labour Day, Prince of Wales's Birthday, Christmas Day, Boxing Day, second Monday in May, and the day set apart for the Grocers' Annual Picnic. When any holiday falls on a Saturday, the following Monday is to be observed as the holiday. On the evening preceding any of the holidays, Saturday hours (8 a.m. to 9 p.m.) may be worked, and "any employer may require his assistants to work for two hours on one evening in each of the months of the year from January to November (both inclusive), and on two hours each night for three evenings a week in each of the three weeks immediately preceding Christmas Day, without additional pay. Each of such evenings shall be on days after the shop has closed at 6 p.m."

Whether all workers, whose wages are fixed at a weekly rate, should be paid for all holidays is a question upon which there is a difference of opinion in legal circles in New Zealand. On the one hand it is held that when a worker is engaged at a weekly wage he is hired by the week, and that no deduction should be made from his wages for time lost through holidays, scarcity of work, etc., but that deduction may be made for time lost through the worker's own default. It is even held by some lawyers that any deduction from weekly-wage workers on account of absence through sickness is illegal, and that the only remedy the employer has, if he does not wish to pay for time lost through prolonged sickness, is to give the worker a week's notice of the termination of his employment. The payment of wages would, of course, not cease until after the notice had expired. On the other hand, it is maintained that unless the employer has entered into an agreement to pay his worker for holidays, or unless the worker is working under an award in which payment for holidays is specially provided for, the employer is only bound to pay for work actually performed by the worker.

So far, no decision appears to have been given by either the Supreme Court or the Appeal Court of New Zealand on the point referred to, but as some of the workers have lately been moving in the matter, it is probable that the Appeal Court may be called upon to give judgment at no very distant date. One labour union has decided to test, in the Arbitration Court, the question whether the employers are liable to pay for holidays under the Court's award. This is quite apart from the question whether weekly-wage workers are, under common law, entitled to receive payment for holidays.

It may be mentioned here that when the Factories Bill was introduced in 1901, it contained clauses providing that *every person* employed in a factory was to be paid for six specified holidays, and all half-holidays. Perhaps it need hardly be stated that a factory in New Zealand is defined as "any building, office, or place in which *two or more* persons are employed, directly or indirectly, in any handcraft, or in preparing or manufacturing goods for trade or sale. . . every building or place in which steam or other mechanical power or appliance is used for the purpose of preparing or manufacturing goods for trade or sale," etc. The workers in factories number about 60,000, and payment for holidays and half-holidays to all such would mean a heavy charge on the working expenses of most business concerns. There was, of course, a great deal of opposition against the provision from the employers. In a resolution passed by the Canterbury Employers' Association it was stated that "payment of wages to a worker when he is producing nothing must constitute such a serious tax upon competitive manufacturing industries as they are unable to bear. Payment for six holidays and fifty-two half-holidays would be equivalent to five weeks and thirty-six hours per year, or over 11 per cent, surcharge on labour cost."

In the evidence on the Bill, given before the Labour Bills Committee of the House in 1901, it was stated that the tax on the employers in Auckland alone, if the provision for payment for holidays were passed, would amount to £3,000 per annum. One company would have to pay £1,380 and another £998.

The Arbitration Court gave an important decision more than two years ago in an action brought against some Dunedin master tailors for having failed to pay their employees for holidays. It was argued on behalf of the employers, that there was no such thing as a weekly employment in connection with skilled trades. The men were paid by the week, but only for work actually performed during the week. There was equity, it was said, in paying a clerk or shop-assistant full wages for any time off, but that it would not be just to compel an employer to pay an artisan for lost time. The artisan was not only paid wages, but received an extra rate of pay for overtime. If it was right that a worker should receive such extra wages for overtime, it was equally right for the employer not to pay for any work not actually done. The custom had been from time immemorial for the men to leave, and for the men to be put off, at a moment's notice, and for payment to be made only for the work performed.

Had the employers, it was further urged, dreamt that any claim would be made by the "weekly-wage man" for a full week's pay when he only worked for a part of the week, they would not have engaged any weekly-wage men. The judgment of the Court was as follows:—

IN THE COURT OF ARBITRATION, OTAGO AND SOUTHLAND DISTRICT (DUNEDIN).

Inspector Lindsay v. Mollison and Co.; Same v. Same; Same v. Wardell and Co.; Same v. Milligan.

Judgment of the Court, delivered by Chapman, J. (President).

The same question was raised in four cases in which the several respondents were charged with failing to pay their men for holidays, contrary to the provisions of the Otago and Southland Tailors' award of 14th November, 1902.

Mr. Sim appeared for the Inspector, and the employers were represented by Mr. William Scott.

The employers had in each of these cases deducted a proportion of the wages as the holiday was not worked. The award gives eight holidays, and provides in clause 4 that "Weekly wages men shall be paid double time for work done on these holidays, and piece-workers shall be paid at an extra rate of 1/- per hour for work done by them on such holidays." There is no provision such as is occasionally found in awards expressly declaring that the holiday shall be paid for though not worked.

It is in other clauses provided that—(1) Forty-eight hours shall constitute a week's work; (2) the minimum wages to be paid to men employed on weekly wages shall be £2 15s per week; (3) weekly wage men are to be paid for overtime, time and a quarter up to 10 p.m.; from 10 to 12 p.m., time and a half; and double time after 12 p.m.; (5) a man who loses time by his own default in any one week must make it up before receiving overtime payment, each week to stand by itself; (6) any employer may employ all his men if he shall so desire, and in such case he shall pay them, except as hereinafter mentioned, the minimum wage of £2 15s per week. Clause 7 provides that, if the employer shall employ pieceworkers as well as wages men, the proportion of wages men shall not be more than one to every four piece-workers or fraction of the first four. Clause 12 provides that there shall be a fair distribution of work amongst all operatives, both male and female, in each workshop of the employers. There were "reasons for award" delivered with the award, the general tenor of which was that the customs of the trade were not disturbed by it.

When this case first came before the Court the employers' representative stated that it should be treated as common ground that it had never been the custom in this trade to pay for holidays; and since this award came into force, though numerous holidays had occurred, it was until recently suggested that it abrogated the old custom of the trade to deduct a proportion of the week's wages in respect of the holiday, and that really a much larger question was involved—namely, whether the award also abrogated the long-standing custom of the trade, and to deduct wages in respect of days which were not worked by reason of the shortness of the work. He urged that the award was not intended to provide for a weekly hiring; that it did not as in cases where that was intended expressly so declare or make provision for

a week's notice on either side; that no particular significance should be attached to the expression "weekly wage men" and "men employed on weekly wages," but that it and "wages men" were merely used to distinguish these men from piece-workers.

We adjourned the case in order that Mr. Sim might consider whether he should call evidence as to the custom, and at the adjourned hearing evidence was called on both sides. Several journeymen deposed as to the custom as stated by Mr. Scott. They had for many years, both before and since the award, had lost time deducted, whether because of holidays or slackness of trade. "Nobody would care to take a week's wages for a day's work," was the observation of one witness. On the other side, though men deposed that they had been paid for holidays, this was in each case, with one doubtful exception, rendered unimportant by the circumstance either that it was expressly agreed, or that they were foremen. We therefore think that the assertion of the employers as to the custom of the trade is proved.

It remains to be considered whether the terms of the award are such as to preclude the raising of this question, as it is precluded by the Christchurch Tailors' award referred to hereafter. We do not think that the expressions used in the award, though at first sight suggestive of a weekly hiring, are really intended. The circumstance that (a) the week is to consist of 48 hours; (b) that double time is paid for holiday work for wages men, and 1s per hour extra, apparently as an equivalent, for piece-workers; (c) that overtime runs on the day's work; (d) that there shall be a fair distribution of work among all operatives, tends to negative this interpretation. As to this last clause, it is to be observed that it applies to a shop where only wages men are employed, and clearly contemplates deductions for shortage of work rather than dismissal of men.

It is further to be noticed that the number of apprentices is limited, and is fixed by reference to "a two-thirds full-time employment of journeymen" during six months, which seems to imply that something less than full-time employment is contemplated with reference to both classes of journeymen. Looking at the whole scope of the award we think that it would be a great surprise to a "weekly wages man" to be told that if he left his work at the end of the day on Friday, or was rightfully discharged for misconduct, he would be unable to recover his five days' earnings because he was hired by the week.

There is, we think, sufficient in these circumstances to negative the implication of a weekly hiring in the full sense, and to let in evidence of the custom of the trade as the best guide to the intention of the Court in making the award, and to some extent of the parties. In the light of this evidence we hold that the custom is as above stated.

Both parties referred us to clause 7 of the Christchurch Tailors' award of the 18th April, 1903 (Book of Awards, vol. 4, p. 183), which provides explicitly that the employment of weekly hands shall be deemed to be a weekly employment determinable by a week's notice on either side, and that no deduction shall be made except for time lost by the man's default, and that the holidays shall be paid for "excepting only the holiday for the day of the annual picnic."

On the one side it was argued that this was merely an expansion without altering the meaning of the provision of the Otago award, and on the other that its insertion there must be taken as showing that the Court intended that without it a contrary inference must be drawn. We do not think that either contention is sound; the provision for separate treatment of one holiday shows that it is not an interpretation or expansion of the provision of the Otago award. On the other hand, there is no rule of construction which admits of a subsequent instrument

altering the interpretation of an earlier one between different parties, or even of an Act of Parliament by implication altering an earlier enactment or law, by assuming a particular interpretation of it (re Lundon and Whitaker Claims Act, 1871, 2 C.A., N.Z., 41), though contemporaneous acts or documents emanating from the same source may be used to interpret each other (Phœnix Bessemer Steel Company, 32 L.T. 854; 44 L.J. Ch. 673: Harrison v. Mexican Railway Company, 19 Eq. 358), and altered language in a later instrument is allowed some effect in interpreting that instrument as showing an altered intention in the enacting body (R. v. Pratt, 4 E. and B. 860; R. v. North Collingham, 1 B. and C. 578; Maxwell on Statutes, chap xi., section 3).

In the result we hold that no breach has been committed, and we dismiss these four cases with witnesses' expenses, and disbursements to be fixed by the Clerk of Awards.

Dated this 15th day of December, 1904.

FREDK. R. CHAPMAN, J., President. (From Book of Awards, vol. 5, page 380.)

It will be seen that the Court did not find that the term "weekly-wages men" in the award meant a weekly hiring in the full sense, and that the evidence as to the custom of the trade was what chiefly enabled the Court to arrive at its decision.

Quite recently two interpretations have been given by the Arbitration Court on this question of payment for holidays. The issuing of interpretations of awards by the Court will be dealt with fully in next chapter, but it may be here pointed out that the interpretations are sometimes of the baldest description. A question is asked as to the meaning of a clause or clauses in an award, and the Court gives a reply in writing, its reasons for the decision arrived at being, in a number of cases, not stated. It would have been a distinct advantage if, in the two interpretations just mentioned, the grounds upon which they are based had been given. It would have enabled the parties interested to understand not only why, in the one case, the Court found that the workers were entitled to be paid for holidays, and why, in the other, payment for holidays had to be made, but also why the Court differed from a previous decision on the same question submitted for interpretation. In the absence of any explanation as to the interpretations, one can only assume that the Court relied upon the wording of the clauses in arriving at its decisions. In giving an interpretation the Court has, of course, little or no evidence before it. An expression of opinion may be given in writing by any of the parties, but that may not always be of much value. The interpretations above referred to are here given in full:—

OTAGO FELT HATTERS' AWARD.

Application for interpretation of section 2 of award dated 8th March, 1907.

Clause 2 of the above-mentioned award directs, inter alia, that "The workers shall be weekly servants, and shall be paid at the rate of not less than £3 per week for a week of 48 hours."

Question 1.—Does this mean weekly employment?

Answer—The clause means that there is to be a weekly employment.

Question 2—Does it mean that no deduction can be made from wages for broken time?

Answer—The worker is to be paid at the rate of not less than £3 per week for a week of 48 hours. He is not entitled to be paid for holidays, or for days on which, through sickness or other similar cause, he is not at work, but he is entitled to be paid for the days on which he is ready to work but his employer does not give him any work to do.

Dated this 1st day of May, 1907.

W. A. SIM, Judge.

Although the above is stated to be an interpretation of clause 2, it appears to be really an interpretation of clause 3, but both clauses are here given:—

Clause 2—All time worked in excess of 48 hours shall be deemed overtime, and paid for at the rate of time and a quarter.

Clause 3—The workers shall be weekly servants, and shall be paid at the rate of not less than £3 per week for a week's work of 48 hours.

WELLINGTON TYPOGRAPHERS.

Application for interpretation of clause 4 of award dated 19th day of May, 1902, (Book of Awards, vol. 3, page 317).

Clause 4 of the above-mentioned award directs, inter alia, that "any compositor or apprentice required to work in jobbing offices on Sunday, Christmas Day, or Good Friday, shall be paid double rates of pay; and if required to do work on Boxing Day, New Year's Day, Easter Monday, or Labour Day, shall be paid rate and a half."

Question—Whether compositors receiving any or all of the holidays set out in clause 4 are entitled to receive payment for same, seeing that clause 3 states the rates of pay shall be £3 per week?

Answer—Compositors are entitled to be paid the weekly wage of £3 without any deduction in respect of any of the holidays mentioned in clause 4 of the award.

Dated this 1st day of May, 1907.

W. A. SIM, Judge.

Practically the same question was submitted to the Court in 1905 (Book of Awards, Volume 6, page 168), when the following interpretation was given:—

The question asked is, are weekly-wage hands entitled to payment for the holidays set forth in paragraphs 4 and 4a of the award dated the

19th May, 1902 (Book of Awards, vol. iii., p. 314), when they do not work on such holidays?

The award alone can be looked at in determining this; different awards variously worded have to be variously interpreted. Paragraph 1 provides for a week not exceeding 48 hours, and runs, "Should a public holiday intervene, the time lost through such holiday shall be deducted from the 48 hours, and not from the overtime." This can only be read as providing that this deduction shall be made, but at normal rates, so that earnings at overtime rates shall be earned even in a short week. We do not think that apprentices are on the same footing, as a contrary intention appears from a comparison of the several paragraphs in the award. Paragraph 3 regulates "rates of pay" in the same terms for journeymen on wages, journeymen on piecework, and casual hands, and in such terms as to suggest that this pay depends on the days and parts of days worked. Paragraph 8 fixes the period of apprenticeship, and prescribes a "weekly wage." This does not in itself necessarily mean that the wage is not to be paid in full for a short week, but looking at the terms of the award as a whole, we think it has that meaning here.

Dated this 21st day of July, 1905.

FREDK. R. CHAPMAN, J., President.

It will be observed that Mr. Justice Chapman does not deal with clause 4 by itself, but reads it in connection with other clauses in the award. Clause 1 states that "should a public holiday intervene the time lost through such holiday shall be deducted from the overtime," and Mr. Justice Chapman says this can only mean that deduction for lost time through public holidays is to be made. The decision of Mr. Justice Sim is that no deduction is to be made for any of the holidays mentioned in clause 4. Possibly Mr. Justice Sim may consider that the "public holidays" in clause 1 has nothing to do with the holidays specified in clause 4. Mr. Justice Cooper was President of the Court when the Typographers' Award was made, and it would be interesting to have his opinion on the meaning of the words "public holidays" in clause 1. Were these public holidays intended to mean days declared such by the Governor, or by the Mayor, or were they intended to mean the holidays mentioned in clause 4 as well as special holidays? Mr. Justice Chapman also refers to clause 3, which reads: "Overtime shall be paid at the rates of time and a third to all wages-hands, and at time and a third to all piece-hands employed on day work." He thinks that the terms of this clause are such "as to suggest that this pay depends on the days and parts of the days worked."

With reference to the following decision given subsequently on this question, it should be noted that the Court had the advantage of hearing arguments:—

CANTERBURY TYPOGRAPHERS—ENFORCEMENT OF AWARD re DEDUCTION FOR HOLIDAYS.

In the Court of Arbitration of New Zealand (Canterbury Industrial District.)

Inspector of Awards v. Whitcombe and Tombs, Ltd.; Same v. Christchurch "Press" Company (Limited); Same v. "Lyttelton Times" Company (Limited).

(Judgment of Court, delivered by Sim, J.)

The question to be determined in these cases is whether an employer who is bound by the Canterbury Typographers' award of the 22nd September, 1900 (Book of Awards, vol. ii., page 184), is entitled to make any deduction in respect of holidays from the wage of a worker who is employed under clause 3 of the award. That clause provides that the minimum rate of wage for jobbing or weekly establishment hands, other than those employed at piecework, shall be £3 per week of forty-eight hours. For the Inspector it was contended that the effect of this clause was to create a weekly hiring, and that in the absence of any express provision on the subject in the award the employer was not entitled to make any deduction from the weekly wage.

On behalf of the respondents it was proved that for many years before the award was made in September, 1900, it had been the practice in the printing trade in Christchurch to make a deduction from the weekly wage for time lost through holidays; that when the industrial dispute came before this Court in 1900 the union did not ask to have this practice abolished; and that after the award was made the former practice was continued, no objection being made to it until quite recently.

In making an award this Court exercises legislative functions, and it has been held by the Court of Appeal that a valid award of this Court is an extension of the statute under which it is made, and that a worker who is entitled to any benefit under such award cannot waive, by agreement or otherwise, his right to insist upon that benefit: Baillie v. Reese (26 N.Z.L.R. 451; 8 Gaz. L.R. 795), in re the Wellington Cooks and Stewards' Award (26 N.Z.L.R. 394, 418, 422; 9 Gaz. L.R. 214). The effect, therefore, of an award is to make unlawful any practice or custom which is expressly forbidden by the award, or which is inconsistent with any of its provisions. If the award in the present case had contained a provision similar to that contained in the awards to which Mr. Wright referred at the hearing (Book of Awards, vol. vi., page 340; volume vii., page 296), expressly forbidding any deduction for holidays, there could have been no question about the matter. There is, however, no such provision in the award, and what the Court has to determine is whether the custom set up by the respondents, if not inconsistent with the provisions of the award, may be used as a guide in the interpretation of the award. Mr. Russell, who appeared for the respondents, did not dispute that the effect of the award was to create a weekly hiring and that prima facie an employer is not entitled to make any deduction from the wages of a weekly servant for time lost through holidays or otherwise, but Mr. Russell contended that the Court was justified in reading into the statutory contract a term, based on the custom proved to have prevailed for so many years before the award was made, giving the employer a right to deduct for time lost through holidays. The award fixes a minimum wage of £3 for a week of forty-eight hours, and it is not an inadmissible construction to say

that if a worker, through absence on account of holidays, works less than forty-eight hours in any week he is to be entitled to be paid only for hours he actually works. The custom relied on is, therefore, not necessarily inconsistent with the provisions of the award, and we think that the award should be treated as having tacitly sanctioned the custom, and should be interpreted in the light of the custom. We are fortified in this conclusion by the fact that for about six years after the award was made all the parties interested treated this as the proper way of interpreting the award. This view of the matter is also supported by the decision of this Court in the case of Lindsay v. Mollison (Book of Awards, vol. v., p. 380), which was decided when Mr. Justice Chapman was President of this Court.

We hold, therefore, that the respondents were justified in making the deduction objected to, and the applications are dismissed.

Dated this 5th day of August, 1907.

W. A. SIM, Judge.

After this decision, supporting as it does the one given by the Court in the case, Lindsay v. Mollison, above quoted, it is hardly likely that further claims for payment for holidays will be made by workers by reason merely of the fact that their wages are fixed at so much per week.

CHAPTER XIII.

INTERPRETATION OF AWARDS.

Like many other documents of a binding character, industrial agreements and awards made under the Arbitration Act are not always framed in such language as to make their precise meaning clear. There may get into an award or an agreement a clause which may be read in more than one way, or a clause which may be so constructed that the parties may, until some authoritative interpretation of it has been given interpret it as they think fit. As different legal opinions are sometimes submitted to the Court with respect to the meaning of awards, it will not surprise anyone unfamiliar with the Arbitration Act that employers have often considerable difficulty in knowing exactly where they stand in relation to the conditions by which they are bound. The Arbitration Court is not, of course, infallible. It is liable to make mistakes, and it cannot be expected, in framing an award, to foresee every possible difficulty which may arise as to the meaning of the various provisions in the award. If every award contained merely regulations as to hours, wages, and overtime, there would be fewer applications for interpretations, and a great deal of trouble would be obviated.

The parties to industrial agreements are sometimes not sufficiently careful as to the manner in which they draft some clauses, with the result that, owing to misunderstanding, employers are found guilty of having committed breaches, and applications to the Court have to be made to have troublesome points elucidated.

The first recorded interpretation of an award appears to be that given in connection with the Thames Gold Miners' Award, which is dated 4th October, 1901 (Book of Awards, vol. 3, p. 28). From that date until November, 1903, the Court issued ten other interpretations. During that period also, several interpretations were given by the Chairmen of the Conciliation Boards, as a number of awards, recommendations, and agreements contain a provision empowering such Chairmen to settle points of difference which may arise. It appears that the Clerk of Awards in each district was frequently asked to explain awards, and the President and the other members of the Court were often

appealed to by letter. The Court, therefore, thought it well that proper facilities should be provided for applications to be made to the Court for interpretations of awards.

The following is a copy of the circular the Court issued in November, 1903, on the matter:—

REGULATIONS RESPECTING INTERPRETATIONS.

The Arbitration Court makes the following regulations for the guidance of Clerks of Awards and parties:—

1. As the advice of the Clerk of Awards is often sought by Union Secretaries and others as to the proper interpretation of awards, industrial agreements, and other instruments where penalties are not sought, the Court has thought it best to make regulations to facilitate the stating of cases for its opinion.

2. Parties frequently address letters to the President and members of the Court asking similar questions. After the publication of these regulations such correspondence will merely be forwarded to the proper Clerk of Awards, who will deal with it by informing the parties of these regulations.

3. Any person who is a party to or directly interested in an award or industrial agreement may obtain the opinion of the Court upon any question connected with the construction of an award, industrial agreement, or any particular determination or direction of the Court or any Conciliation Board or Chairman thereof, or upon the construction of any statute relating to matters within the jurisdiction of the Court, subject to the following conditions:—

(a.) The Court will, without considering itself obliged to give reasons, decline to give such advice where in the opinion of the Court it is inadvisable to do so.

(b.) No such opinion is actually binding upon the Court, even in the matter submitted to it.

(c.) This is especially the case where any want of bona fides is apparent, or where the Court has not been fully informed, or has not fully appreciated the question put or the full consequences of the answer, or the matter affects parties beyond those who have actually submitted the question, or where the asking or obtaining such an opinion has a tendency to defeat or avoid penalties which have accrued and ought not to be avoided, or to protect parties from the consequences of wilful breaches of the award, agreement, or other instrument.

(d.) Parties who are unwilling to seek or concur in seeking an opinion under these limitations should resort to a test case in the ordinary course.

4. An application for interpretation may be initiated by any party competent to make an application for enforcement, but it is necessary that the opposite party should concur in and sign such application.

5. Such application may be accompanied by such material as any party wishes to have forwarded therewith. Thus, parties may lodge with the Clerk of Awards copies of the correspondence which has taken place respecting the matter in dispute, and any party may hand in a written or typewritten memorandum stating the view of the case which he contends the Court should adopt. All such documents shall be legibly written on foolscap, or typed on paper of foolscap size, and four copies thereof shall be lodged. A copy of every document so forwarded shall be sent by the Clerk of Awards to the opposite party. The fee applicable to filing an application for enforcement will be paid.

6. Such application shall be made upon a form to be supplied by the Clerk of Awards.
7. No disputed question of fact should be left open to be determined on such an application. If any dispute should arise it must be determined by evidence and the attendance of parties.
8. When such an application is duly lodged in the proper office the Clerk of Awards will forward the same to the President, who will bring it before the Court in due course. The Court if it thinks fit so to do will order that the case be argued by the parties or in exceptional cases by counsel.
9. The opinion of the Court thereon will be given in open Court, and will be forwarded to the Clerk of Awards.
10. Until forms of application are printed, ordinary applications will be altered by the Clerk of Awards in accordance with a form settled by the Court.

Dated this 16th day of November, 1903.

FREDK. R. CHAPMAN, J.,
President.

It will be seen that the Court required that in each application for interpretation both parties should sign it. It sometimes happened, however, that while one party was anxious for an interpretation, the other party preferred to leave matters alone, and would refuse to concur in the application to the Court. This came to the knowledge of the Court, which caused another circular to be issued. The circular was as follows:—

ADDITIONAL REGULATIONS RESPECTING INTERPRETATION.

The Arbitration Court makes the following regulations for the guidance of the Clerk of Awards, Inspector, and parties:—
1. These regulations are supplemental to those made on the 16th day of November, 1903, and are to be read with them.
2. All Inspectors empowered by law to enforce awards and industrial agreements are entitled to file applications for interpretation.
3. The Court considers that in every case where the facts appear clear, and there is no ground for seeking a penalty, the Inspector should carefully consider whether it can reasonably be treated as a case for interpretation; but the Court does not desire to interfere with the discretionary power of the Inspectors, especially when they are not at once reasonably met by the respondent.
4. The Court finds it necessary to deal with the possible case of a union refusing to concur in an application for interpretation where the employer desires to have one stated and the facts are not in dispute.
5. In such a case the employer is not in a position to bring a test case, and it is undesirable that he should be invited to supply a test case by committing some act which may amount to a breach. The duty of the employer in such a case in future will be to request the Inspector to make an application for interpretation.
6. If the facts are clear, it will then be the duty of the Inspector to make such an application, to which the concurrence of the union shall not be necessary. Such application shall be headed "Inspector's Application for Interpretation."
7. The Clerk of Awards shall in such case, at the request of the Inspector, forward copies of the application to all parties interested, and any party may have his views represented in terms of clause 5 of the regulations of the 16th November, 1903.

8. If the Court finds itself unable to deal with the matter without further evidence or explanation, it will call upon the parties for further information, or defer deciding the case until it visits the district in which the question arises.

9. Any matter which involves a question as to the performance by any party of his duty under an award or industrial agreement shall be deemed a question of interpretation within these and the said regulations.

10. These regulations apply to pending applications, whether filed by Inspectors or parties.

Dated this 10th day of January, 1905.

FREDK. R. CHAPMAN, J.,
President.

By the issue of these regulations the Court no doubt intended to remove any barrier which would prevent the employer from obtaining an interpretation, but it may be doubted whether the object aimed at has been satisfactorily accomplished. Each application for interpretation has to pass through the hands of the Inspector of Awards, and it is left to that official to decide whether the application shall go forward to the Court or not. I am informed that in some districts the Inspector has absolutely refused to forward applications lodged by employers, but upon what grounds the refusals have been made I am unable to say. The number of interpretations given by the Court and by the Chairmen of the Conciliation Boards up to 1907, are shown in the following table.

Table showing number of interpretations of awards given in each year from October 1901 till 1907:—

	By the Court.	By the Chairmen of Boards.	Total.
1901 (October to December) ..	8	6	14
1903	7	3	10
1904	9	9	18
1905	17	8	25
1906	27	5	32
1907 (January to April) ..	12	4	16
	80	35	115

53, or nearly one-half of the above interpretations were given in four trades. The carters head the list with 22, the gold and coal-miners and tailoresses come next with 11 each, while the typographers follow with 9.

I think it will be interesting to give a number of the interpretations. It will show the difficulties which arise in connection with the working of awards, the knotty points the Court and Chairmen of Boards are called upon to settle, and the peculiar

nature of some of the decisions. Some of the points submitted for interpretation seem simple enough, but the reason for bringing them under the notice of the Court may have been owing to some difference of opinion between the employers and workers, or between the employer and the Inspector, respecting their correct meaning. The interpretations which follow are mostly given in chronological order. The clauses interpreted are not always given along with the interpretations, but I have supplied these omissions where I have thought it advisable to do so.

WELLINGTON DRIVERS' AWARD.

As to the question: How should the 47½ hours be worked in a week? I am of opinion and decide that, within reasonable limits, the arrangement of these hours, except as to allowing the half-holiday, must be left to the discretion of the employers, to be regulated according to the circumstances and requirements of their business; but that, should employers work their men unreasonably at hours not required by the circumstances of their business, then such abuse of the award might be reviewed and dealt with under the general provision in the award for the regulation of working hours. This review, however, should, I think, if made at all, be by the Court of Arbitration.

Given under my hand, at Wellington, this 5th day of March, 1902.

JOHN CREWES,
Chairman.

AUCKLAND CARTERS' AWARD.

IN THE MATTER OF INTERPRETATION OF CLAUSE 3.

16th September, 1902.

In a recent award affecting carters the Court of Arbitration defined "attendance on horses" to be "necessary stable attendance." In this case the hours are 46½ per week, and the hours of work are to be calculated "from the time the driver leaves the stables until the driver returns to the stables." In the Auckland Carters' award the employment of carters is stated to be attending to horses and the work of driving horses, with, of course, the necessary duty of loading and unloading. As the award limits the hours of work to 47½ hours per week, no part of the work of driving can be beyond this limit. I decide, therefore, that the hours of work must be counted from the time the driver leaves the stables until the time he returns to the stables.

GEORGE BURGESS,
Chairman of the Conciliation Board, Northern Industrial District.

OTAGO BRICKWORKERS.

IN THE MATTER OF A DISPUTE BETWEEN THE OTAGO BRICKWORKERS' INDUSTRIAL UNION OF WORKERS AND MESSRS. C. AND W. SHIEL.

In this case the Messrs. Shiel, instead of paying the workmen employed in getting the clay for the manufacture of bricks, have entered into a contract with them to supply the clay required at a price per thousand of bricks made therefrom. The union contend that this amounts to the employment of men on piecework, and that, as no piecework rates are provided in the award, no piecework is allowable.

Messrs. Shiel contend that clause 9 of the award contemplates such a course, and that they are within their rights.

Clause 9 is as follows:—"If any employer shall sublet any part of his works or plant, the person to whom he shall have sublet the same, shall in all respects abide by and perform all the terms and conditions of this award. If such person shall fail to do so, then both the persons to whom the works or plant are sublet and the person subletting the same shall be liable as for a breach of this award." The meaning of the word "sublet" in the clause is not very clear, but I am of opinion that it is not intended to apply to such circumstances as arise in the present case, which can only be held to be a substitution of piecework for day wages. Mr. Shiel urges that as piecework is not prohibited by the award, but is impliedly authorised by the clause referred to, he is entitled to carry on the system he has instituted. He was also prepared to adduce evidence that the men earned as much as the prescribed wages, and were satisfied with the arrangement. Unfortunately that aspect of the question cannot be considered.

What I have to decide is, Does the award allow of piecework being substituted for day's wages? I am of opinion that it does not. It is probably true that in the present instance the men make as much, possibly more, than the authorised wages; but if piecework were allowed without a tariff being fixed by the award for such work it would open the door to the evasion of the award, and enable men to be employed in that way at such rates as might yield less than the fixed scale of wages. The decision of the Court in the case against the Fortification Railway and Coal Company shows that work carried on otherwise than the mode fixed by the award even where the rate of wages is not affected, is not allowable. I therefore decide that the contention of the union, that Messrs. Shiels' method of winning the clay by piecework is a contravention of the award, is correct.

A. BATHGATE,
Chairman Conciliation Board.

17th February, 1903.

OTAGO BRICKMAKERS.

IN THE MATTER OF A DETAIL DISPUTE UNDER THE OTAGO BRICKMAKERS' AWARD.

The Chairman sat in his office to hear a detail dispute under the Brickmakers' award, the question being whether, if a man out of employment as a brickmaker, took casual work at another class of employment, he was entitled to have his name entered in the employment-book, and he decided that if such man was immediately available for employment in a brickyard he was not disqualified by taking casual work from having his name entered.

Dated the 23rd day of November, 1903.

A. BATHGATE,
Chairman Conciliation Board.

FEDERATED SEAMEN OF NEW ZEALAND INDUSTRIAL UNION OF WORKERS v. THE ANCHOR SHIPPING AND FOUNDRY COMPANY, LTD.

IN THE COURT OF ARBITRATION (WELLINGTON DISTRICT). APPLICATION FOR INTERPRETATION OF AN AWARD DATED THE 30th JUNE, 1902.

Two questions were formulated for the opinion of the Court.

Clause 19 of the award runs:—"19. When a steamer arrives in port in the morning and sails again the same day the 4 a.m. to 8 a.m. watch

on deck shall be allowed a watch below from 8 a.m. till 12 noon." There are other provisions in the clause to which it is unnecessary to refer for the purpose of determining the present questions. The last paragraph in the clause runs as follows:—"The foregoing clause (19) shall only apply to the time-table steamers employed in the following trades:—(e) Coal-boats trading between Westport and Greymouth and any port on the east or west coasts of New Zealand."

The question as to whether the steamers of the Anchor Line are coal-boats, they being employed in carrying other kinds of cargo besides coal, is somewhat complex, and as the matter in controversy is determined by other considerations, we prefer to reserve ourselves the right to determine this question when it more pointedly arises. It may be that a vessel may be a coal-boat upon one voyage and not on another—i.e., it may change its character before the round voyage is completed—and it may be that in a particular case the carrying of coal is subordinate to a larger and more important operation, in which case the dominant purpose of the voyage might have to be considered.

We think that in this case our judgment must turn upon the question whether the boats are time-table boats. In the first place, we are satisfied that the whole of the clause, including provisions as to steamers on five voyages or classes of voyages, is governed by the reference to time-table steamers. We are bound by the true grammatical meaning of the clause when that is ambiguous, and here we find no ambiguity. The question, then, is: Are the boats described time-table boats? We do not think they are. The evidence is that the owners issued no serial time-table, but the agents inserted advertisements in the local Press shortly before each steamer sailed, not pursuant to any general plan, but in obedience to orders from headquarters. This was contrasted with the course of business of another company, which regularly issued a monthly time-table, in which it included the fixed dates of departure of steamers on some of these classes of voyages, including coal-boats trading out of Westport and Greymouth to various ports. We think that this latter practice marks the steamers so listed as time-table steamers, while the former does not. Our answer, accordingly, is that the Anchor Line is not failing to observe the award.

Dated the 12th December, 1903.

FREDK. R. CHAPMAN, J., President.

In the carters' awards in the chief centres of the colony, it is provided that youths may be employed at "light work" at rates of pay not less than the regular minimum wages. The clause in the Dunedin Award (dated 28th June, 1901) reads:—

Employers are at liberty to employ youths above the age of eighteen at light work according to the following scale:—From eighteen to nineteen years, £1 1s per week; from nineteen to twenty years, £1 4s per week; from twenty to twenty-one years, £1 7s per week; from twenty-one to twenty-two years, £1 10s per week. Over twenty-two years at full rates, unless held to come under clause 11. The definition of 'light work' shall be in each case a matter to be settled under the provisions of clause 17. The number of youths so employed shall not exceed one to each employer, firm or company employing one driver, and one to each complete four additional drivers.

The clauses in the awards elsewhere are in similar terms, and in each case, failing an arrangement with the union, the Chairman of the Board has had the duty imposed upon him of

defining what constitutes "light work." I find that no fewer than six decisions have been delivered, and it will be seen from these, which are given below, that each case has had to be treated on its merits. So far as the handling of packages is concerned, the Chairman of the Dunedin and Canterbury Boards hold a different opinion. The Canterbury Chairman thinks that a youth of twenty-one is not doing light work if he handles a parcel exceeding 56 pounds, while the Dunedin Chairman is of opinion that anything over thirty pounds in weight is quite sufficient for the youth to handle, unless, of course, he gets the full minimum wage.

DUNEDIN AND SUBURBAN CARTERS.

The question I am called upon to decide in this dispute is what constitutes "light work" for tip-dray drivers, the union and Mr. Stevenson having been unable to agree on that point.

The union contend, not without some show of reason, that there is no "light work" in that particular employment, and that the provisions relating thereto in the award apply to other branches of drivers' work only. As, however, clause 10 of the award contains no exceptions, I hold that it applies to every branch of the employment the subject of the award.

The union proved that Mr. Stevenson employed two youths who were professedly engaged in "light work," and adduced some evidence to show that there was little, if any, difference in the work performed by these youths and the ordinary tip-dray carters; but this evidence was of too general and vague a character to outweigh that adduced by Mr. Stevenson, some of whose witnesses, such as the gangers acting for the contractors for whom Mr. Stevenson was driving, were independent witnesses uninterested in the dispute.

I find that these youths were employed to drive the carts only, and did not, as a rule, load or help to load their drays, that whenever they did any filling it was of their motion, and was work not required of them, but that it was occasionally done. I therefore decide that the work on which these two youths were engaged was "light work" for a tip-dray carter.

I was asked by both parties to give some general interpretation of "light work" for tip-dray carters for future guidance. It is hardly possible to propound an exact definition of the term "light work," but I hold (subject to any modifications I might see fit to make in any special cases which may come before me) that a youth employed in merely driving a tip-dray, and who has no filling to do, is engaged in "light work" within the meaning of the award.

Dated at Dunedin, this 18th day of May, 1904.

A. BATHGATE,
Chairman Conciliation Board.

DUNEDIN AND SUBURBAN CARTERS.

The question in dispute was whether a youth named George Royal was engaged in light work or not. The evidence disclosed that on at least two occasions he had been engaged in filling his dray from a heap of coal at the wharf and carting it to the yard and there unloading it.

Usually his work appears to have been work in the yard, which Mr. Guthrie contends is work outside the award, a view in which I concur; but

I find that when engaged in carting the work on which he was engaged was no lighter than that performed by other carters, although it may not be such hard work as other work which has to be done by coal-carters. I cannot hold it to be light work, and the fact that it is only occasionally he is so engaged does not, in my opinion, alter the character of the work. I was asked by the union to lay down some general principle for guidance in the matter of light work. It is almost impossible to do so, as circumstances vary so much; but I hold that in any case where the driver has to handle his load as well as drive his work is not light work, unless some special and unusual circumstances render it so.

Dated at Dunedin, this 27th day of May, 1904.

A. BATHGATE,
Chairman Conciliation Board.

DUNEDIN CARTERS—RE LIGHT WORK.

IN THE OTAGO AND SOUTHLAND DISTRICT.—IN THE MATTER OF THE DUNEDIN CARTERS' AWARD.

The Chairman of the Conciliation Board sat in his office, Water Street, Dunedin, to hear a dispute under the said award between the Workers' Union and T. E. Shiel and Co.

After hearing the parties the Chairman decided that youths required to handle packages exceeding 30lb in weight were not engaged in light work.

Dated Dunedin, this 31st day of March, 1905.

A. BATHGATE,
Chairman.

CANTERBURY DRIVERS.

IN THE MATTER OF A DISPUTE BEWEEN THE CANTERBURY DRIVERS' UNION OF WORKERS AND MR. O'DONOGHUE, CONTRACTOR.

The matter in dispute in this case is as to what constitutes light work under section 8 of the Canterbury Drivers' award.

Mr. O'Donoghue, a contractor, employs a youth as driver of two horses carting soil from one place to another, the driver not filling his own carts but simply tipping them. Mr. O'Donoghue claims that a youth is entitled to work under clause 8.

I am of opinion that the Court of Arbitration did not intend that carting soil should come under the designation of "light work."

J. R. TRIGGS,
Chairman Conciliation Board, Canterbury District.

Christchurch, 20th October, 1904.

CANTERBURY DRIVERS.

IN THE MATTER OF A DISPUTE BETWEEN THE CANTERBURY DRIVERS AND MESSRS WILLIAMSON AND CO.

The matter in dispute is that Messrs. Williamson and Co. make application to employ a carter under clause 8 in the Canterbury Drivers' award of the 9th October, 1902.

After considering a letter received from Mr. W. King, secretary to the union, and inspecting the class of goods Messrs. Williamson and Co. handle, I found the majority of the packages weigh from 12lb to 14lb each, with an occasional package weighing 56lb. I have decided

that Messrs. Williamson and Co. can employ a carter under the designation of "light work" as provided in clause 8, provided that the carter does not handle packages exceeding 56lb in weight.

J. R. TRIGGS,
Chairman Conciliation Board, Canterbury District.

14th July, 1905.

WELLINGTON DRIVERS.

The Drivers' Union and the employers, through their respective secretaries, requested me to give a definition of "light work" under clause 4 of the award of 29th November, 1904.

After hearing, at the same time and place, the secretary of the Workers' Union and Mr. Peter Hutson, the employer interested, on the merits of the case, and after examining the delivery books of Mr. Hutson, and taking into consideration the admitted facts, I find that the work usually done by a young man in Mr. Hutson's employ included the delivery of bags of cement, weighing 190lb to 196lb, from the cart into the buildings in course of erection.

This work I consider to be not "light work" according to the meaning of clause 4 of the award, especially when buildings—as is often the case in Wellington—are not so easy of access from the spot at which a delivery cart has to stop. I am therefore of opinion that when a youth is called upon to do such work, he should be paid the minimum wage for a worker of his class.

Dated this 14th day of April, 1905.

B. L. THOMAS,
Chairman Conciliation Board.

The following is a nice point decided by the Court. It will be admitted that the decision is an exceedingly fair and equitable one:—

CHRISTCHURCH TAILORESSES.

IN THE COURT OF ARBITRATION, CANTERBURY INDUSTRIAL DISTRICT.

Christchurch Tailoresses' Union (Inspector Lomas) v. Kaiapoi Woollen Manufacturing Company (Limited).

JUDGMENT OF THE COURT.

Application for interpretation of award, clause 5 of which requires that members of the Union shall have preference of employment (vol. iii., p. 70).

The respondents have a clothing factory to which the award relates, and a totally distinct establishment not subject to any award, which is a ladies' jacket and costume factory. An emergency arose in the shape of a sudden failure in the demand for ladies' jackets. Having nothing in hand to keep their costume hands in employment, they transferred to this factory a certain quantity of tailoring-work, such as juvenile suits and men's Chesterfield overcoats, to make up. There was no gain to the company in this, as the costume hands were slower at this unaccustomed work than the tailoresses: the convenience to the company was that it enabled them to keep on these hands rather than discharge them. The effect of the distribution was to give the costume hands half-time employment, while the factory hands were working two-thirds time. In most cases higher wages than the log rates were paid, but in a few instances lower rates may have been paid. It was stated that in another kind of emergency, the reverse process had been resorted to, and thousands of jackets had been sent into the tailoring factory when

there was a pressure of that kind of work, and this had been proved very profitable to the members of the union, as but for this arrangement the tailoresses would only be kept going two-thirds time.

We do not think that a company thus dealing with work in an emergency is offending against the preference clause. Nobody is either taken on or dismissed, and though in a somewhat remote sense members of the union fail to get what they would get under a literal application of the preference clause, we do not think that it was so intended to apply it. It is not every apparent infringement of the letter of the law that constitutes a breach of it according to its object and intention. Hence we think that the proper way to look at the question is to look at the mode of dealing with emergencies as a whole, and see if it derogates from the rule intended to be established by the preference clause. Primarily a proprietor must be allowed considerable latitude in dealing with emergencies, and we do not think that this practice shows anything unreasonable, and we hold that it does not amount to a breach. We do not think, however, that less than the log rates can be paid to hands performing work so transferred.

Dated this 6th day of September, 1904.

FREDK. R. CHAPMAN, J., President.

A few more interpretations may be given:—

CHRISTCHURCH HAIRDRESSERS AND TOBACCONISTS' ASSISTANTS.

The question asked is as follows: If a number of customers are waiting in the saloon at the time provided for the assistants to leave off work, would they be considered as "work in hand"; or is this limited to the person occupying the chair and unfinished?

Answer—We think that all those who are actually waiting in the saloon, and can fairly claim to have become acknowledged customers, are within the expression of "work in hand." The reason of this is, that any such person, if tacitly accepted, and led to suppose that his case can be dealt with, and thus induced to wait, has made a contract with the proprietor, and is entitled to have it carried out.

Questions of this sort would be avoided if it were arranged that customers presenting themselves at too late an hour might be told, with the authority of the proprietor, not to wait.

Dated this 8th day of February, 1906.

FREDK. R. CHAPMAN, J., President.

Note:—In a recommendation of the Conciliation Board made in June, 1906, and agreed to by both parties, "work in hand" was defined as "work in chair," excepting that each assistant may be required to attend to one other customer after the hour of closing."

WELLINGTON COACHMAKERS.

IN THE COURT OF ARBITRATION. WELLINGTON COACH-MAKERS' AWARD.

Application for interpretation of award (vol. ii., p. 97, clause 1).

Question—Can a man who is a cabinet-maker by trade, and who is engaged exclusively fitting up the inside of tramcars, be deemed to be a journeyman coachmaker?

Answer—We are of opinion that any person who is engaged on any class of work, and is competent properly to do that work, or who is accepted by the employer as competent to do it, should be considered a worker in that branch of the trade.

Dated this 10th day of May, 1906.

FREDK. R. CHAPMAN, J., President.

WANGANUI PAINTERS AND DECORATORS.

Application for interpretation of the award dated the 23rd day of December, 1904 (Book of Awards, vol. v., p. 350, clause 9.)

Clause 9 of the award is as follows:—"The proportion of apprentices to journeymen employed by any employer shall not exceed one apprentice to every three journeymen or fraction of three."

Question—May an employer include himself in the number of journeymen employed, providing he is a bona fide worker at the trade, when reckoning his average of journeymen, in complying with the above section?

Answer—Yes, it has always been customary so to interpret such a clause when the employer actually works as a journeyman.

Dated this 23rd day of August, 1906.

FREDK. R. CHAPMAN, J., President.

DUNEDIN AND SUBURBAN GENERAL LABOURERS.

The question in dispute was, Are men who are working in a quarry but not actually engaged in quarrying stone to be deemed "quarrymen" within the meaning of clause 3 of the award?

After hearing the parties the Chairman decided that a quarryman did not include every man who worked in a quarry, but only those who were actually engaged in quarrying stone. He based his decision on the meaning of "quarryman" given in the Imperial, Webster's, Latham's, and the Century Dictionaries, in all of which it is defined as being "a man who is employed or engaged in quarrying stones." Spawlers engaged merely in breaking up or shaping stones were not quarrymen, as according to the definition of "quarrying" given in the Imperial Dictionary the operation of extracting stone from the ground or detaching it from the rock was a necessary ingredient in the operatiou of quarrying.

Dated at Dunedin, this 4th day of December, 1906.

A. BATHGATE,
Chairman Conciliation Board.

WELLINGTON COOKS AND WAITERS.

Application for an interpretation of the award dated the 26th day of October, 1906.

Question—If the union refuses to allow Chinese cooks to become members of the union merely because of the fact that they are Chinese, do they forfeit their right of preference?

Answer—The union is only entitled to preference of employment for its members if and so long as its rules permit any person of good character and sober habits to become a member on the terms set forth in clause 12 of the Board's recommendations. The union would not have any right under rules which comply with this condition to exclude from membership a Chinese cook if of good character and sober habits, and if the union refused to admit such a person to membership any employer would then be entitled to employ such person in the same way as if there had been no preference for members of the union.

Dated this 21st day of March, 1907.

W. A. SIM, Judge.

The number of applications for interpretations is more likely to increase than decrease in the future. The number of awards and agreements are steadily on the increase, and frequently some new point arises in old awards upon which either the one party or the other desires some elucidation.

CHAPTER XIV.

DISSATISFACTION WITH THE COURT AND ITS AWARDS.

For some years after the Arbitration Act came into operation, the awards given by the Court were generally in favour of the workers, that is to say, the workers, in many cases, succeeded in getting at least an advance in wages and some other advantage. Afterwards, however, when fresh demands were made after the awards had expired, the Court declined to make any substantial alteration in the old conditions, unless it was satisfied that good reasons had been made out to justify any additional burden being imposed on the employers. So long as the Court continued to give the workers some concession, the latter made no complaint either against the Court or the Act, but whenever the Court thought fit at any time to change its policy, loud dissatisfaction was expressed by the workers' unions. It is correct, I think, to state that, generally speaking, employers have accepted unfavourable awards without making any special comment. They have sometimes fought on behalf of their interests very keenly when before the Court, but have invariably treated the Court's decision with respect.

A common complaint the unions have made against the Court is that it has given decisions "against the weight of evidence." Whether, however, this charge has any foundation in fact may be only a matter of opinion. Evidence given may be considered weighty because of its bulk, while its quality may be rather poor. I have, while attending the Arbitration Court, observed that over and over again a large number of witnesses have been called by the unions in support of the claims made, and that nearly everyone has repeated, like a parrot, what the others have said. The Court could not be expected, in an industrial dispute, to attach much importance to evidence of that kind. The same remark, of course, would apply to evidence given by the employers. What the Court requires is evidence of such a character as will justify it in granting or in refusing the increase in the wages asked. A few representative employers, for example, may be able to show, from documents and other evidence, that the industry in which they are engaged will seriously suffer if

the conditions asked for are granted. Against this evidence the union may bring a host of witnesses to say that they are being paid so much, that they are not satisfied with their lot, and that they agree with every one of the items contained in the statement of claim. It is hardly necessary to ask what the duty of the Court is in such a case.

I believe that the first protest made against an award of the Court took place at Christchurch, in 1901. After the Court made its award in the boot trade, the following reports in reference to the award appeared in the "Lyttelton Times" of the 13th May, 1901:—

MEETING OF BOOT OPERATIVES.

At a meeting of the Christchurch Operative Bootmakers' Society, held to consider the recent award of the Arbitration Court, the following resolution was carried unanimously:—"That this Union is of opinion that the recent award of the Arbitration Court in the Bootmakers' dispute was against the weight of evidence. It also strongly protests against the action of the Court in allowing statements being put into Court, they not having been perused by the representatives of the Bootmakers' Federation; and consider that the Court should have, under the circumstances, requested the employers to produce all books bearing on the question at issue, more particularly concerning the output of the various factories, which it was stated showed a decline compared with a few years ago. The Union is also of opinion that the Court did not exercise its undoubted right in fixing rates of wages in the rough stuff department."

RESOLUTION PASSED BY THE TRADES AND LABOUR COUNCIL.

"That this Council is of opinion that the Court of Arbitration has failed to give effect to the provisions of the Industrial Conciliation and Arbitration Act in not fixing a rate of wages for one of the departments referred to in the settlement in the boot trade dispute, when it was shown to the Court that the wages of these workers were fixed in Australia and America."

The following paragraph also appeared in the "Lyttelton Times":—

There is a good deal of strong feeling among the members of the Christchurch Boot Operatives' Union in regard to the recent award of the Arbitration Court in connection with the boot manufacturing industry. The award has met with extreme dissatisfaction. There has been some talk of holding an indignation meeting, while a number of members clamour for the cancelling of the registration of the Union.

There were three points the Court was asked to settle in connection with the boot trade dispute. These were: (1) The rough stuff department; (2) the hours of labour; (3) the minimum wage. Shortly before the award was actually issued, the President (Mr. Justice Cooper) announced the decision of the Court in regard to these points. According to the newspaper reports the President, among other things, said:—

With regard to the rough-stuff department, the Court for the present could fix a minimum wage for only the sole-cutters. Following the precedent of the award made some time ago, however, the Court could reserve to itself the power to make any such award, at the expiration of the present award, as it might consider necessary, with regard to the terms of employment of any other persons engaged in the rough-stuff department. With reference to the hours of labour, the Court had come to the conclusion that the conditions which existed at present were not essentially different from those which existed in 1898, when the hours of labour were fixed at 48, and the Court could not see sufficient reason why any alteration should be made in that respect. As to the minimum wage, while, on the one hand there was no doubt that there had been a slight increase in the cost of living in the colony, the Court thought that, on the other hand, the conditions of trade were such that it would not be justified in making any material alteration. Therefore, it would fix the minimum wage at 42s.

In August, 1901, the Arbitration Court again engaged the attention of the Canterbury Trades and Labour Council. At a special meeting held, a report of the Executive was submitted, in which the following passage occurs:—"The Executive has pleasure in noting the fact that the whole of the disputes, some of which have been pending about nine months, have been settled. We regret we cannot say satisfactorily settled." The Court refused to make an award in the wool-scouring and fellmongering trades at this time, and the Trades Council accordingly passed the following resolution:—"That this Council views with dissatisfaction the non-awards in these industries."

In explanation of the Court's action, Mr. Justice Cooper said that "the fall in the price of wool, and the very critical condition of the wool trade, presented so many difficulties to the mind of the Court, that it had decided not to fix the rate of wages for the workers. If the Court had fixed the rate according to the present commercial value of wool, and fixed it for a definite time, it might be doing wrong to the workers, as a rise might take place. If, on the other hand, the Court fixed a higher rate than at present, it might do wrong to the employers." His Honour concluded:—

We feel that we have a very heavy responsibility, and while we recognise that the conditions of life are harder now in some respects than they were some years ago, the cost of living having increased, we have to consider the matter from the point of view not only of the workers, but also of the employers and of the whole community and colony at large. We think that the course we have taken is the only one which, with the heavy responsibility upon us, we can safely adopt.—(From "Lyttelton Times" report, 15th August, 1901).

From 1901 till the present (early in 1907) complaints against the Court's awards have continued. I propose, however, to give only a few of those which have excited more than ordinary

attention. One or two have already been referred to in previous chapters.

In the "Christchurch Press" of the 14th June, 1902, a report is given of a meeting of the Wellington Trades and Labour Council, at which a letter was read from a workers' union, suggesting that a conference of unions should be held to "consider the position of unions under the Conciliation and Arbitration Act, especially with respect to the preference clause." A delegate is reported to have said "that a big percentage of the unionists of this city (Wellington) cursed the Conciliation and Arbitration Act. It would soon be the biggest curse the colony ever had, unless unionists raised their voices in protest against the dirty methods in which the Act was carried out in the present day." Another delegate said that a judge was not going to be persuaded by a working-man. "The President had interpreted one award not on its terms, but on what he said was the intention of the Court in framing it. That meant that they did not know what any of their awards might mean."

The Wellington correspondent of the "Lyttelton Times" wrote to that paper on January 27th, 1903, as follows:—

> The carpenters of the city feel much aggrieved at a recent decision of the Arbitration Court affecting their trade, and held a mass meeting to-night to consider the situation. The opinion was generally expressed that carpenters should not be paid less than 1/6 per hour. A resolution was passed expressing the opinion that the award was contrary to the weight of evidence, and declaring that the Arbitration Court was unworthy of confidence. A motion in favour of withdrawing from work was not seconded, but it was decided to demand 1/6 per hour from the beginning of February.

Although there does not seem to have been any outcry against the decision of the Court in refusing to make a new award in certain of the West Coast mining industries, early in 1905, dissatisfaction, it appears, was felt by some of the unions. As the Court's decision was unique in the history of the operation of the Conciliation and Arbitration Act, particulars of it and the cases connected therewith may be given. In each of the cases, which concerned the Blackball and Denniston Coal mines, the engine-drivers employed by the Westport Coal Company and the Reefton gold mines, the union claimed a substantial increase of wages, and in some of them the employers asked for a reduction in the current award rates. The question, however, which the Court had seriously to consider in connection with them was that which arose out of legislation respecting the hours of labour in mines. Clause 6 of "The Coal Mines Act Amendment Act, 1901," provided that subject to any award made prior to the

commencement of the Act, a miner must not be employed underground for a longer period than eight hours without payment for overtime, the period "to commence from the time the miner enters the mine, and to finish when he leaves the mine." At its sitting at the West Coast in March, 1902, the Court in the case of the Denniston miners continued the conditions fixed by an agreement made in 1898, decided that in the Granity Creek mine the conditions were substantially the same as in the Denniston mine, and confirmed an agreement which had been entered into in July, 1901, in connection with the Blackball mine. In 1902 industrial agreements were entered into in the cases of the Denniston engine-drivers and Reefton gold miners. While these awards and agreements were in operation, the Legislature was again at work. In the session of 1902, the Mining Amendment Act (relating to gold and other mines) was passed, in which it was provided that a miner was to be paid overtime when employed in a mine for more than eight hours, "counting from the time he enters the underground workings of the mine to the time he leaves the same." This was, however, "subject to the provisions of any award *now or hereafter in force.*" Further in 1903, the Coal Mines Act was amended so that the overtime was to be paid "subject to the provisions of any award *now in force.*" These were the provisions which the Court had to take into account when called upon to make awards in place of the awards and agreements made in 1902, which had nominally expired. Put into force they would mean that the miners would have to be paid "for such proportion of the eight hours as might be occupied by them in going from the entrance of the mine to the workings upon which they were engaged, and in returning again from the workings to the 'bank.'" It was pointed out that, as the time occupied travelling both ways underground was such as to reduce the average working day to six hours and forty minutes, the loss to one company would amount to about £20,000 per annum. The Arbitration Court, in giving its decision, asks: "who is to make up the loss?" It says that it was suggested that the loss should be borne by the employer. It may be mentioned here that a West Coast member of the House, when the "bank to bank" clause was before Parliament, proposed that the public should be made to bear the loss. The Court says that it has "had to consider the whole position in the interests of all parties concerned; of the workmen not directly concerned, but involuntarily affected; and of the public of the Colony; and after the most careful consideration

of the whole position we find ourselves unable to make an award in any one of the cases." Among the reasons the Court gives for its inability "to make a just or even a workable award" are the following:—

> Any award must necessarily greatly disturb the existing state of affairs which is the result of recent settlements either by the Court or by the parties, and we can see no way of making an award which will not cause grave injustice to some class of persons.
>
> That there is every reason to fear that to materially increase the cost of production would in some cases, at least, result in the closing of the mine, with the inevitable consequence of reducing the number of men employed on the West Coast, and thereby prejudicially affecting the general prosperity of the industrial district.
>
> That in our opinion it is almost certain that the output of the coal mines would be diminished were awards made in these cases. This would stimulate competition from abroad, diminish employment in New Zealand, and operate detrimentally to the interests of the Colony.
>
> Moreover, we feel satisfied that such injustice as would ensue from the making of an award would either produce great discontent or would lead to results of the most injurious character to the industries affected, and that probably both these consequences would ensue, with the result that, in the end, the greatest sufferers—if any distinction can be drawn—would be the employees, or a large section of them.

Commenting on the decision of the Court, the "Otago Daily Times" said: "The conclusions at which the Court has arrived at are . . . it appears to us, so logically sound as to be absolutely irrefutable. The Court could not ignore the amendments that were made in the law in 1902 and 1903, but as they were calculated to have such an unfortunate effect on those they were designed to benefit, the Court has conceived the plan—probably a somewhat daring plan—of setting the amendments aside."

Complaints by a section of the miners against this decision reached the Secretary for Labour, and the latter, in his report, issued in July, 1905, directs attention to the matter. He states that miners' unions have complained that the sections in the Mining Acts of 1902 and 1903, providing for payment of overtime when a miner is employed underground more than eight hours are being "abrogated by refusal of the Arbitration Court to grant an award. They plead that the eight hours 'bank to bank' provided by Parliament is nullified by the provision that such hours are subject to, 'the provisions of any award now in force,' and that until the old award can be superseded by a new one, they cannot obtain the advantages conferred by the Act; therefore that their being unable to obtain a new award entails great injury on them in the way of lost time." The Secretary admits that it "is evident from the long exhaustive

statement on the subject made by the President of the Court, that very careful and judicious inquiry and consideration were given before such refusal was made," but he considers that the question is an important one, and begs "to draw the attention of the Government to a position which is causing dissatisfaction and needs serious attention."

The Government did give "serious attention" to the matter. In 1905 the Mining Acts relating to gold mines were compiled into one Act, in which the following clause was inserted:—

> Clause 248. Subject to the provisions of any award in force under "The Industrial Conciliation and Arbitration Act, 1900," on the twenty-third day of November, one thousand nine hundred and three (being the date of the commencement of "The Mining Act Amendment Act, 1903"), every workman employed underground in a mine shall be entitled to be paid overtime when he is employed underground for more than eight hours in one day, counting from the time he enters the underground workings of the mine till the time he leaves the same.

In the same year the Coal Mines Compilation Act was passed, and it contained a clause (37) almost identical in terms with the one just quoted. Neither clause, however, could enable the miners to obtain the advantage of the bank to bank provision, until a change in the conditions of any award in force on the 23rd November, 1903, were made. The Arbitration Court, as we have seen, refused to make any change in the miners' awards, and, in consequence of this, efforts were at once made to have the Mining Acts amended so as to nullify the Court's decision. In connection with the Coal Mines Act Bill, introduced in the session of 1905, evidence was taken by the Goldfields and Mines Committee, and in the course of the evidence, the Court of Arbitration was subjected to a good deal of criticism. The Miners' Union, at Denniston, had submitted a number of amendments, one of which was, "that the hours of labour in mines be not more than eight hours from surface to surface in any one shift." The President of the Union, in his evidence, said:—

> The reason we are asking for that is this: some four years ago we made an arrangement for two years, and at the end of that agreement we filed a reference. The reference was lying some nine months before the case was heard, and then the Court refused to give a further award, and in consequence we have had to work under the old award. Instead of working eight hours from bank to bank we have had to work eight hours and a half. . . . . We believe the Court has gone beyond its jurisdiction in not making an award when requested. . . . .
>
> Q.—You told us of the decision of the Arbitration Court on the West Coast, can you give us the reasons that led the Court so to decide?
>
> A.—I can give you no reasons why the Court did not decide.
>
> Q.—Did the Court give any reasons?
>
> A.—It gave a lot of reasons, but they were not reasons to our mind.

The following is from the evidence of the Secretary of the Westland Trades and Labour Council:—

> My reason for saying that the Arbitration Court could not have carefully considered the evidence tendered before it is on account of its own judgment. They show gross ignorance as to the hours of labour worked. . . . .
>
> Q.—Supposing the Arbitration Court ignored the law and constituted itself the judge of the law in the award: you want the eight hours from bank to bank fixed so that the Court cannot hereafter interfere—you want a statutory law to fix it?
>
> A.—That is so. We consider the Court took up that position to deprive us of the benefits the Legislature intended to give us as miners.

Parliament did not give effect to the wishes of the coal miners, but it succeeded, during the last few days of the session, in giving the gold miners the full benefit of the bank to bank provision. A few of the facts connected with the passage through Parliament of the clause which gave the gold miners by statute what the Arbitration Court had refused to give effect to, may be given.

When first introduced, the Mining Acts Amendment Bill contained no provision which interfered with the hours of working underground, and the Goldfields and Mines Committee, on the 13th October, in reporting on the Bill, made no recommendation on the matter. When the House was in committee, however, Mr. Guinness, a West Coast member, and Speaker of the House, moved the insertion of the following clause:—

> Section nine of "The Mining Act Amendment Act, 1902," is hereby amended by repealing the words "subject to the provisions of any award now in force under 'The Industrial Conciliation and Arbitration Act, 1900.'"

On a division the clause was carried by thirty-one votes to thirteen. The Bill, with this amendment, was, on the 25th October, sent to the Legislative Council, and the Mines Committee of that body took it in hand. The Committee rejected the amendment, and reported to the Council accordingly on the 27th October. The Council, however, re-inserted the clause, which passed into law. Thus Parliament ignored the recommendation of the Mines Committees of both Houses.

The action of Parliament caused great dissatisfaction among the employers of the Colony. It appeared to them to be regrettable that, notwithstanding that the Court had taken lengthy evidence in the mining cases, and had given that evidence the most serious consideration, the Legislature should lightly set aside the Court's decision. It further appeared to them that the workers' unions would be likely to increase their efforts to

obtain by statute certain advantages which the Court from time to time considered it unwise to grant.

In 1906 an amendment to the Coal Mines Act was introduced, providing that "every workman employed underground in a mine shall be entitled to be paid overtime when he is employed underground for more than eight hours in any day, counting from the time he enters the underground workings of the mine to the time he leaves the same." This, of course, would put the coal miners on the same footing as the gold miners had been put the previous year. A considerable amount of evidence was given before the Mines Committee of the House against the Bill by employers, some extracts from which may be given. The chairman of a coal company said:—

The objection which is taken by the Taupiri Coal Mines Company, and also by other coal-mining Companies in which I am interested, is that under . . . the Bill the operation of the "Conciliation and Arbitration Act" is set aside, and that the effect of such legislation would be to interfere with the functions of the Arbitration Court. They contend that the hours of workers in connection with the coal mines, both underground and on the surface, should not be fixed by statute law, but by the Arbitration Court after full enquiry. . . . . There has been no dissatisfaction whatever expressed by the workers, either underground or on the surface, with reference to the hours fixed by the Arbitration Court in any coal-mines award at Auckland, and there has been no difficulty between the employers and the workers in fixing the working hours in coal mines at Auckland. . . . If this Bill becomes law one of two conditions of things must be brought about—either the price of coal must be increased to the consumer, or the wages of the workers must be reduced. It is undesirable that either the wages of the workers should be reduced or that the price of coal should be increased to the consumer.

The Chairman of the Parliamentary Committee of the New Zealand Employers' Federation, said:—

We object to the legislature interfering with the awards of the Arbitration Court. . . . . If the Court makes an award we think the House should not try to regulate the hours.

Q.—And if the Court makes no award?

A.—Well, the men are quite able to take care of themselves.

Q.—You mean the miners?

A.—Yes, any workmen. They are not downtrodden in New Zealand like they are in other places. Take, for instance, the case of the drivers in Wellington, which is on the same lines as the points we are considering. The drivers had an award made in Wellington as to their hours of labour, and the Minister for Railways altered their hours by shutting the gates of the goods shed at an earlier hour. The men cannot work now after half-past four o'clock. What would be the effect if the coal-mines shortened the hours of working? It would increase the cost of production. And who would pay for it? All the industries in the colony that use coal, and, therefore, the consumers. It comes right back to the consumer again, and we have been told about the increased cost of living. What is the cause of it if it is not the shortening of hours, increase in wages, and combination?

The Managing-Director of a coal company said:—

The time . . . will come when, owing to the extended workings, and probably for other reasons, the cost will be so increased as to make it imperative that some adjustment of the present conditions must be sought; and if the principle of seeking in a private Bill to amend a grievance on one side or the other is to be recognised, then we say that the confidence which we have learned to place in the Arbitration Court and its administration so far will be very much shaken, we shall not feel the security which has always been claimed as a strong point in favour of the Act being continued.

The Bill was withdrawn, but it is not improbable that it will be introduced again.*

No award of the Court has caused more serious dissatisfaction than the Dunedin Seamen's Award, made in 1906 (Book of Awards, Vol. 7, page 50). By previous awards the Arbitration Court had advanced the wages of the men 10/- per month, fixed regular meal hours, defined the watches, allowed overtime for any work done beyond stated shifts, and granted other concessions. It will probably be admitted by the men themselves that they are the best cared for seamen in the world. The men, however, believe that their lot could be very much improved. When they came before the Arbitration Court early in 1906, they asked, among other things, an increase of 10/- per month in wages, an increase of 6d. per hour in overtime, and preference to unionists. Evidence was heard at considerable length by the Court, which delivered its award on February 14th. The award is, in the main, a renewal of the old conditions, and except in the case of the firemen on small trading boats within river limits in the Auckland province, no reductions have been made in wages. The work done by these firemen can, it appears, be

* During the session of 1907 an amendment to the Coal Mines Act was passed, by which every miner, irrespective of the provisions of any award in force, is to be paid overtime when employed underground for more than eight hours in any day, "counting from the time he enters the underground workings of the mine to the time he leaves the same." The Denniston miners considered that this amendment meant that they were entitled to work only eight hours from bank to bank, notwithstanding that their award required that they should work eight hours at the face and be paid overtime for the time spent underground beyond eight hours. They, accordingly, acted on this view, but the Arbitration Court convicted them of committing a breach of award. The Court held that the underground workers must work eight hours at the face before they were entitled to receive the wages fixed by the award. The miners were greatly dissatisfied with this decision, and gave considerable trouble.

The Arbitration Court would appear to view with some dissatisfaction the action of Parliament in over-riding its Awards, as, in the Granity Coal Miners' Award, recently issued by the Court, the following clause has been inserted:—"The Court has reserved power to itself to vary all or any of the provisions of this award in the event of any change being made by legislation in any of the conditions regulated by the Award. This will enable the Court to remedy the hardship that might otherwise result from Parliament altering—as it has done in some cases some of the conditions of an award while leaving the parties bound by all the other provisions of the award. The Court has no desire to suggest that Parliament should not exercise its privilege of legislating with regard to all or any of the matters that may be dealt with in an award of the Court, but it seems desirable to point out that if an award fixes the hours of work and wages in connection with any particular industry, any alteration in the hours of work really means an alteration in wages in all cases where the wage fixed is a daily or weekly one, and that in such a case Parliament, while professing to deal only with hours of work, is really legislating with regard to wages."

attended to by boys, as the quantity of coal shovelled per hour is about five times less than that shovelled by the men on the large steamers. Among other alterations, a clause has been inserted dealing with men who, through their own default, cause payment of overtime to be paid to other members of the crew who have to take their places. Subject to certain conditions, defaulters have to pay for any overtime incurred by reason of their absence.

The Court in its reasons for the award says: —

The majority of the Court do not think that any substantially different circumstances are shown to have arisen since the last award justifying an increase of wages. Evidence was given as to the prosperous condition of the Union Steamship Company, the chief employer in this colony. Such evidence is usually admitted by the Court as part of the general inquiry, but the Court does not settle the wages on a profit-sharing basis, as that might in many industries involve the necessity of fixing a differential rate as between employers, and would certainly lead to confusion.

As to preference, the majority of the Court think that the matter stands on the same footing as on former occasions when it was asked for and refused, and does not see grounds for departing from those decisions.

The workers' representative on the Court dissented from the decision of the majority for the following, among other reasons:—

I think the wages should have been increased 10/- per month. Considering the nature of the seaman's occupation, he is not paid anything like equal to shore labour hour to hour, and the increase would only have meant 4d per day. The uncertainty of the effect of the Federal Tariff has been removed since the last award was made.

I consider that a good case has been made for preference to unionists, over 95 per cent. of men employed being members of the union, and I do not think anything has been advanced to show that it would interfere with the discipline on board ship.

Soon after the award was delivered, great disappointment was expressed not only by the Seamen's Union, but by other labour unions. The following are extracts from a reported interview between the Secretary of the Seamen's Union and a representative of the "Dunedin Star" on the day following the issue of the award:—

It is considered by the union's representative that the Court's decision has been entirely against the weight of the evidence on behalf of the seamen, and in view of that fact the seamen may very seriously consider whether it is worth their while to again appeal to a Court which apparently ignores all evidence and denies to seamen the justice which is, as a rule, meted out to members of other organisations. The seamen have given so-called Arbitration a very fair trial, extending over about ten years. The most cherished principles that they are striving for have always been denied us by the Court, and improvements in the seamen's conditions are evidently not to be obtainable under the present system of Arbitration. The withholding of the preference clause from one of the oldest and strongest organisations in New Zealand which possesses every qualification to meet the generally accepted requirements

of the Court, is looked upon as being extremely unjust, especially in view of the fact that the Seamen's Union were primarily responsible for the Arbitration Act being put upon the statute book, and have indirectly conferred on dozens of other organisations the right of preference to unionists.

The Seamen's Union passed the following resolution:—

That this meeting expresses its astonishment at the terms of the award of the Arbitration Court in the case of the Seamen's Union versus the Union Steamship Company and other ship-owners, and is emphatically of opinion that the decision of the Court has not the slightest relation to that justice which we have been led to expect from a judicial tribunal. In view of the obvious impossibility of securing an award based on the weight of evidence adduced, we consider it useless to spend further time and money on Arbitration Court proceedings.

The Otago Trades and Labour Council expressed its sympathy with the seamen as follows:—

That this Council notes with regret that the Arbitration Court so often seemingly ignores evidence placed before it, and frames its awards totally at variance with the evidence, the latest example being in the Seamen's Union dispute, and, further, that the Council especially deplores the refusal of the Court to grant preference in the face of the fact that over 90 per cent. of seamen are members of the union, and that this council extends its sympathy to the Seamen's Union for the unsatisfactory award given in the face of the strong evidence placed before the Court in the Union's favour.

The Australasian Federated Seamen's Union, Wellington, passed a lengthy resolution, in the course of which the following occurs:—

That in view of the seamen having failed to recover the reduction in wages and overtime effected by the steamship owners in 1893, and little or no improvements in working conditions having been made during the operations under the Act, this meeting is of opinion that the Executive Council should immediately consider the position, and recommends that a ballot should be taken of all members of the Federation in New Zealand on the question whether the registration of the union under the "Conciliation and Arbitration and Trade Union Acts" should not be cancelled.

The following are extracts from the "Lyttelton Times" of 31st March, about six weeks after the award was issued:—

A reporter who went to Lyttelton yesterday and saw a number of seamen on the steamers, was impressed with the strong feeling that exists. The seamen are evidently quite unanimous in refusing to regard the award given in Dunedin some weeks ago as a just decision. . . . . None of them would give any information as to the report that there is a projected strike to be brought about on the eve of the Christmas holidays. They did not deny that the subject has been discussed, but in all cases referred the reporter to Mr. W. Belcher, Secretary of the Maritime Council. "The employers got us down in 1890," one of the men . . . remarked . . . "and they'll keep us down if they can. I reckon that it would have been much better for us if we'd never had the Arbitration Court. It has done nothing for us; it has gone in the opposite direction, and my opinion is that it would be better to wipe it out straight away. That certainly is the general opinion among us, both seamen and firemen."

The "Otago Daily Times," of March 30, 1906, in an article dealing with the resolution passed by the Federated Seamen's Union, considered that the reduction of the wages from £8 10s. per month to £5, in the case of firemen and trimmers upon steamers under 200 i.h.p., running within extended river limits in the Auckland provincial district, was a sweeping one, and was not warranted.

The same paper added:—

> The seamen have, of course, their grievances, also, upon other points, in some of which we sympathise with them. But, even if we were to acknowledge that in all respects they had a strong claim to a greater amount of consideration than they have received from the Court, we cannot believe that they will be benefited materially, or perhaps at all, by taking themselves out of the scope of the operation of the "Industrial Conciliation and Arbitration Act" and regaining for themselves the right of employing primitive and crude methods of industrial warfare.

About six months afterwards there were persistent rumours that the seamen and firemen intended to strike. There appears to be little doubt that such a proposal was talked about by the men, some of whom had considered that the time was opportune for enforcing their demands, in consequence of the heavy coastal and oversea traffic which would take place during the New Zealand Exhibition season.

Fortunately no strike or trouble happened. The award will expire on 1st April, 1908, and it is certain that action of some kind will, after that date, be taken by the seamen with the view of having their conditions of labour revised. The strong feeling manifested by the seamen against the Arbitration Court was echoed by many unionists throughout the Colony. The newspapers took the matter up, and published lengthy interviews with employers and the labour leaders.

At Dunedin the general opinion of employers was that organised labour had secured its fair share, and that if the trades unions were not satisfied now, they never would be. The labour leaders had complained that they had nothing to thank the Court for, but that this was without any foundation. It was stated that Mr. Justice Chapman, when Chairman of the Dunedin Conciliation Board, had been the means of greatly improving the wages and conditions of the seamen, and had been thanked for the services he had rendered to the unions. Workers' representatives thought that Parliament had made a great mistake in amending the Act so as to allow either party to take a dispute direct to the Arbitration Court, thus passing over the Conciliation Boards. A Dunedin member of the House of Representatives, and one of the recognised leaders of the Labour

Party, was of opinion that the general discontent among the unions was largely the result of the spirit of the Act being lost sight of, *i.e.*, that all cases should be considered and decided in equity. "Now the whole matter is becoming more of a legal question." His view was that the quicker conciliation was returned to, "the better for both parties." He indicated that the workers were becoming more dissatisfied every day, and that something would eventuate "within the next three years."

A large employer of labour at Christchurch when interviewed said:—"I think the labour people have expected too much from the Arbitration Court, and they are very naturally disappointed. They thought that the establishment of an Arbitration Court, with large powers, would in some undefined way have an actual effect upon wages, apart altogether from natural conditions. They are finding out now that this is not so, and they are disappointed. . . It has also got to be remembered . . . that the Arbitration Court proceedings involve a good deal of expense. . . The expenses in which the unions are involved, and which their members have to pay, in preparing the references and attending the sittings of the Court, are very considerable, and must be a tax on their resources." Another employer thought that the Act had been very badly used by some of the unions, and that in the early days of the Court it had given way too much to the demands of the men. "If," he said, "the Court had confined itself to regulating the hours of work, payment for overtime, and the lowest wage to be paid to any man in the trade, and left everything beyond that to the employers, a much better result would have been obtained." Speaking at a meeting of the New Zealand Political League, held at Christchurch, in April, 1906, the President (the Hon. J. Rigg) is reported to have said that he believed that the principle of the Arbitration Act "was thoroughly reasonable, but if it was not practical the less the unionists had to do with it the better. The Court had failed to appreciate the principle underlying its constitution, that the workers should be given compensation in times of prosperity for the losses they might suffer in times of depression . . . but when the Court even reduced wages they could not wonder at dissatisfaction."

In Wellington the opinions obtained respecting the Arbitration Court appear to have been obtained principally from the representatives of the workers. Extracts from reported interviews with two labour leaders may be given. The Secretary of

the Wellington Trades and Labour Council said that the position seemed to be that it was not the object of the Arbitration Court to allow the worker to obtain a fair share of profits in the form of wages. "Where a trade was low or languishing, the Court put the wages down, and it was really when a trade or business was found to be flourishing that the Court thought of awarding a living wage. There was a strong feeling among the leaders of labour that the Court had failed. . . So great was the general dissatisfaction at the working of the Court that there was a general tendency to kick over the traces and resort to the old methods of striking. He hoped, however, that both sides would take a lesson from the strike of 1890, and devote their energies to the obtaining of political reform."

The President of the Trades and Labour Council said: "If there had been no Court at all a higher rate of wages would maintain to-day. The worker had nothing to thank the Court for, as they were worse off to-day than they were ten years ago, their purchasing power being considerably less. . . They wanted a Court where a man could, without knowledge of the Act or the law, state his case plainly, and be dealt with in a plain, common-sense manner." Dealing with the technicalities which had been introduced, he said: "Things had come to such a pass that the secretaries of unions were talking about forming themselves into a union, so that they could meet together to consider points and get a joint legal opinion as these technicalities appeared, so as to lessen the expense to each union. Then again," he continued, "who could have any faith in the Court when perhaps only two in twenty of its awards are enforced?"

A well-known labour leader at Auckland when interviewed said:—"The real position is this: we have noticed by the recent decisions of the Court that they have practically, by a majority at any rate, arrived at the conclusion that there shall be no increase in wages. This forces us to meet the employers on the give-and-take principle, and we are satisfied we can get more out of the employers by showing a disposition to conciliate than if we took the case before the Court." He candidly admitted that there was not, as had been thought, any wave of conciliation sweeping over the district; the unions simply found that they could get better results by conferring with the employers than they could hope to get from the Court. He further said: "In no case have the unions received any material benefit as regards wages from the Arbitration Court in its recent awards. While we are receiving no increase in wages, our expenses as regards

house rent and the cost of living are increasing year by year. Up to the present time we have had to counsel patience to the disaffected members, but we cannot go on crying 'Peace, peace,' when there is no peace."

At the time these reports of interviews appeared (March and April, 1906), there was a marked disposition on the part of the workers to come to terms with the employers, but if the opinion of the Auckland labour leader just quoted represents also that of the unions in the other centres, this new policy was not adopted because the workers wanted to conciliate the employers, but because they believed it would be more advantageous to them than appeals to the Court. The "New Zealand Herald" (Auckland) of 30th March, 1906, in commenting on the general dissatisfaction of the unionists said:—

"Their attitude seems to us irrational and illogical, though it justifies the predictions of those critics of the Act who asserted that its real test would only come when the awards ceased to be in favour of the unionists. If that test in a very modified form produces such effects in time of prosperity, what extraordinary convulsions may we not look kfor in the periods of depression? . . . But the whole position only affords an additional illustration of the difficulty, if not impossibility, of fixing by Act of Parliament or legalised tribunals economic conditions which vary according to the ebb and flow of circumstances, and are in their fluctuating effects necessarily prejudicial to the interests of one class or another."

At the Annual Trades Councils' Conference, held in April, 1906, some very hard things were said about the Arbitration Court. A Wellington delegate moved: "That this conference has no confidence in the Arbitration Court as at present constituted." He said he "knew of instances where the Court had given its judgment without any consideration of the evidence, and without any reference to the evidence of both parties. They had not," he continued, "the confidence in the Court that they possessed in previous years." The Chairman of the conference said that the Court had "introduced elements that were very disquieting." The under-rate clause was considered "a disgrace," and "the clauses of an award simply became legal quibbles, and the amount of interpretation required . . . was interminable." The personnel of the Court was attacked, and a Dunedin delegate said "they were getting too much law and too little justice." Other speakers were sympathetic, but opposed the motion, which was lost by eleven votes to five.

It was not until the present year (1907), when Mr. Justice Sim had succeeded Mr. Justice Chapman as President of the Arbitration Court, that the Employers' Associations ventured to criticise, by way of resolution, some of the decisions of the Court. In regard to procedure the Court had followed precedents which had been in force almost from the time that that tribunal was established, but Mr. Justice Sim has lately set aside some of these. One of his rulings touching procedure may be mentioned.

A recommendation of the Wellington Conciliation Board had been filed in the Flaxmillers' dispute. This recommendation had been agreed to by the union, but the employers appealed to the Arbitration Court. When the case was before the Court, Mr. Justice Sim said he understood the employers would move in the matter. It was pointed out that it had been the custom for the party bringing the dispute to open the case, but the Judge replied that the Court required the employers to move. It was then remarked that the Court had changed its practice. To this Mr. Justice Sim replied: "This Court has not changed the practice; the union is satisfied with the recommendation of the Conciliation Board, and it would be utterly absurd that they should proceed with the case before the Arbitration Court."

This ruling is contrary to that laid down by Mr. Justice Chapman in a case heard at Nelson in 1904 (Book of Awards, Vol. 5, page 330). Mr. Justice Chapman, who, in this matter followed the practice of his predecessors, stated that when the Board's recommendation is not accepted by both parties, it comes to an end, and the Court has before it not a recommendation but a dispute, and the party applying for an award has to inform the Court what it requires. He required the union to begin the case.

The decisions of the Court specially objected to by the employers were: The establishment of the principle of weekly employment in the Otago Hatters' Award; the interpretation given in the Wellington Typographers' Award, by which payment for holidays is ordered; and the imposing of a penalty on a Gisborne master-painter for breach of award, which had been previously settled by the Labour Department. The two former decisions are referred to fully in the chapter on "Holidays." The particulars of the latter are here given.

The Gisborne painter had paid one of his men less than the award wage, and had failed to pay overtime to four other employees. The Inspector of Awards, after investigation, was of opinion that no wilful breach had been committed, and decided

(no doubt after reporting the case to the Labour Department at Wellington) to take no action against the employer, who paid the back wages due. Notwithstanding this settlement, the Gisborne Painters' Union brought the employer before the Arbitration Court for having committed the breaches of award. The Court's decision (Labour Journal, June, 1907, page 615) was as follows:—

The respondent is a builder carrying on business in Gisborne. He employed the men referred to in painting buildings erected by him, and thus became subject to the Gisborne Painters and Decorators' award. If he was not acquainted with the terms of that award, he knew that there was such an award, and ought to have made himself familiar with its provisions. We impose a fine of £1 in each of the five cases, and order the respondent to pay the sum to the union in each case, with the disbursements made by the union for fees of Court.

It appears that the Inspector of Awards investigated these cases, and that after the respondent had paid all that he ought to have paid under the award the Labour Department decided not to take any proceedings against him. We think that where the Department, at the request of the union, has investigated a case, and decided not to prosecute, it is only in exceptional cases that the union itself should institute proceedings. We cannot, however, accept the doctrine that the decision of the Labour Department should be accepted by this Court as final on the subject. To do so would be to substitute the Department for the Court as the tribunal to try breaches of award, and that is scarcely what the Legislature intended. At the same time, we repeat and adopt what was said by Mr. Justice Chapman when President of the Court, on the subject of prosecutions: "What he wished to say on behalf of his colleagues and himself was that, amongst other things, it was preferable that prosecutions should be conducted by the Inspector instead of by the unions, because in the end there was less likelihood of friction arising out of prosecutions conducted by Inspectors." (Book of Awards, vol. v., p. 222.)

Mr. Brown (employers' representative) dissented from the finding of the Court, his reasons being as follows:—

The union in this case proceeded against the employer for not paying overtime, and employing an under-rate workman without a permit. The employer admitted the facts, but pleaded that the Inspector had investigated the matter, and that he had immediately paid up in full, and the Department did not deem it necessary to take further proceedings. The Court did not ask the Inspector for any explanation. The Court, by majority, fined the employer £5. It was recently laid down by the Court, among other directions to Inspectors, as follows (vol. v., page 221): "Inspectors were doing their duty efficiently and in a perfectly reasonable way, and, speaking on behalf of his colleagues and himself, that among other things it was preferable that the prosecutions should be conducted by Inspectors instead of by the union, because in the end there was less likelihood of friction arising out of prosecutions conducted by Inspectors." Mr. Justice Chapman further said that the Court expected the Inspector to investigate a case when it was properly brought under his notice by the union. He was independent of the union, he was a Government official, and could very often say himself that a case should not be brought before the Court. It is the duty of the Inspectors to investigate cases brought before them by the union, but that investigation has a thread of judicial element in it. The Inspector must always impartially determine whether there is a fair case on which

to proceed. The President concluded as follows: "We fully expect that Inspectors will act on their own responsibility, not on the mere suggestion of the unions, and that they will in every case brought before them by the union fully investigate the facts from an independent standpoint, and take their own stand." It seems to me that the Court having so laid down what Inspectors should do in carrying out their duties should not, unless for very grave reasons, interfere when they have made a settlement when it is shown that all moneys have been properly paid in full. No such grave reasons appear to me in this case.

The Department of Labour has settled a great many cases during the last few years, and obtained hundreds of pounds for workers, and saved the time of the Court as well as the workers and employers.. A further point is this: the union did not bring the men, who equally broke the award, before the Court. Generally speaking, the union will not bring their own men before the Court, although they are equally guilty with the employer (in all cases when the Department bring a case of illegal breach they summon the men as well as the employer).

For all these reasons I think this case should have been dismissed. In fact, the way the Arbitration Court is used for trivial matters is like using a steam-hammer to crack walnuts. Moreover, such decision gives the precedent for any union to re-open any case previously settled by the Department's Inspector.

The resolutions passed by the Auckland, Wellington, Canterbury and Otago Employers' Associations, expressing strong disapproval of the new rulings and decisions of the Court were, for the most part, similarly worded. Among other things, they expressed concern at the Court's departure from well-established precedents, and considered that the innovations introduced would act prejudicially to the interests of the industries of the Colony.

Commenting upon the complaints made by the employers, the "Otago Daily Times" said:—

. . . When the Court had laid down certain principles for the guidance of the parties to industrial disputes—principles which they are encouraged to regard as definitely established—it is distinctly disconcerting, as well as calculated to cause inconvenience and uneasiness, to find that these principles are suddenly abrogated. . . . .

Dealing with the Court's recognition of the principle of a weekly employment of industrial workers in the Dunedin Felt Hatters' Award, the same paper said:—

We understand the principle to imply that the employees in a factory shall be entitled to a full week's wage for every week in which they shall be at work, irrespective of the amount of work they may do or of the number of days for which they may actually be employed, and irrespective also of the fact that they shall be entitled to overtime payment. And if this is the correct interpretation of the award on this point, it will be seen that there is a great deal of force in the contention of the Employers' Associations. But it is probably very doubful whether the principle of a weekly employment on such a basis is in the long run one that will operate to the benefit of the workers as a class. For it must be evident that the effect in manufacturing industries that are not sufficiently supplied with orders to admit of the factories being continuously worked full time will be that employees who might otherwise be retained on half-time at such periods of slackness will be thrown out of their situations.

CHAPTER XV.

STRIKES.

Although during 1906 the discontent amongst a large number of the workers' unions was intense, and although rumours were numerous that a strike either by the seamen or by some other class of workers might occur at any moment, most people were loth to believe that any actual defiance of the strike clauses in the Arbitration Act would take place.

The first strike by men working under an award of the Court, since the Arbitration Act came into operation, happened at Auckland, on the 14th of November, 1906. This strike, however, was not the result of any dissatisfaction with either the Court or the Act, but was in consequence of some difference between the manager of the Auckland Tramway Company and the men. The men, it appears, had been indignant at the dismissal of one or two employees, and when ten motor-men were requested to teach learners they refused to do so. Their reason for this refusal was that it was no part of their duty to instruct hands. By five o'clock in the evening—the busiest time of the day—the other motormen and conductors had gone out on strike in sympathy with the men dismissed, and there was a complete cessation of traffic. Shortly afterwards a conference took place between the manager of the Company and a labour leader and clergyman. The result of the conference was that the men who had been dismissed for refusing to teach learners, and those who had struck work, were allowed to resume their duties as if nothing had happened. It was agreed that the employee whose dismissal had caused the trouble should be allowed to resign as from the end of November, and that in future any man accused of an offence involving dismissal should have the right to produce evidence in his favour, if procurable. The cars then resumed running, the strike having lasted only about three hours.

Six months afterwards, the Tramway Company were brought before the Arbitration Court, charged with having committed a breach of award by dismissing fourteen employees on the day of the strike, without having given fourteen days' notice, as required by clause 6 of the Award. The company pleaded that instant dismissal was justified, but the Court held that, except

in the case of one of the men, the charge was proved, and imposed a penalty of £5 and expenses.

Two out of over 60 of the employees who had gone out on strike were charged with a breach of clause 15 of the Industrial Conciliation and Arbitration Amendment Act of 1905, which provides for a penalty being imposed on any one who strikes or creates a lock-out, or who aids or abets a strike or lock-out, or a movement intended to produce a strike or lock-out. The men pleaded guilty and were each fined £1 without costs, the President of the Court remarking that the strike was unpremeditated and without organisation.

On February 13th, 1907, the people of the Colony were surprised to find it reported in the morning newspapers that an organised strike for a higher rate of pay and other concessions had commenced among the slaughtermen employed at the freezing works in the neighbourhood of Wellington. The men were working under an industrial agreement which, if valid, made them subject to the strike clauses in the Amendment Act of 1905. The strike was begun in the full belief that the agreement was valid, and the men made no disguise of the fact that they preferred to strike rather than wait until their grievances could be dealt with by the Arbitration Court.

About 120 hands came out, the companies affected being the Gear Meat Company and the Wellington Meat Export Company. The men demanded that the rate per 100 sheep or lambs killed should be raised from 20/- to 25/-, no overtime to be worked; work to cease at 12 o'clock on Saturdays, and dead sheep to be paid for at the rate of 6d. instead of 5d. each. It stated that the 25/- rate was paid in three of the Australian states, and that this had been brought about by the action of some of the men who were associated with the strike in New Zealand. At the outset the employers appeared to be hopeful that the strike would be settled without much trouble. They at first offered 21/- per 100 sheep all round, overtime work to be avoided if possible, but to be carried on where absolutely necessary. They further offered, if the men resumed work, to pay as from the first day of the strike any rate of pay the Arbitration Court might fix when it heard the dispute. Finding these terms were not acceptable to the men, the meat companies offered 22/- per 100 sheep, but this was also refused. In the meantime the strike gave the Labour Department a good deal of concern. Some of the officers from the Department endeavoured to persuade the slaughtermen to cease striking, but with no avail.

The Minister for Labour stated to an interviewer that "the fundamental principles of the Act were attacked if they permitted any union to strike at will. . . The reports of my officers show that a large number of Australians are connected with this strike, and they openly avow that they did the same in Melbourne and got an increase of 5/-. . . I very much regret such a thing should have occurred, as we had begun to think that in New Zealand the days of strikes were over."

Five days afterwards the strike was practically brought to an end by the union acepting an offer of 23/- per 100 sheep made by the Gear Company. The Wellington Meat Company was, in the face of the capitulation of the other company, unable to hold out longer than one day more. Both companies must have suffered a considerable loss through the strike, but they had the sympathy of all the other employers in the Colony, and it is quite probable that had a determined stand been maintained they would have come off victors.

While the strike was in progress the Labour Department made it clear that proceedings would be taken against the men who had come out. The Slaughtermen's Union, as a body, was not involved, as the men, though members of the Union, acted independently of the latter. The Secretary of the Union stated that he did not know the men intended to leave their work. Had the Union organised the strike it would have been liable to a penalty of £100. This was doubtless well-known to the men, and no doubt led them to take action as individuals.

A few days after the strike was ended the Arbitration Court sat in Wellington to hear the charge brought by the Labour Department against the slaughtermen for a breach of section 15 of the Amendment Act of 1905, which reads as under:—

15. (1) Any industrial union or industrial association or employer, or any worker, whether a member of any such union or association or not, which or who shall strike or create a lock-out, or take part in a strike or lock-out, or propose, aid, or abet a strike or lock-out or a movement intended to produce a strike or lock-out, shall be guilty of an offence, and shall be liable to a fine, and may be proceeded against in the same manner as if it or he were guilty of a breach of an award:

Provided that the fine shall not exceed one hundred pounds for any such offence in the case of a union, association, or employer, or ten pounds in the case of a worker.

(2) No worker shall be subject to a fine merely because he refuses to work or announces his intention to refuse to work, at the rate of wages fixed by any award or industrial agreement, unless the Court is satisfied that such refusal was in pursuance of an intention to commit a breach of this section.

(3) This section shall only apply when there is an award or industrial agreement relating to the trade in connection with which such strike or

lock-out has occurred or is impending in force in the district where the alleged offence is committed, or some part thereof.

(4) The Court may accept any evidence that seems to it relevant to prove that a strike or lock-out has taken place or is impending.

(5) When it is alleged in any application made by any person empowered by law to enforce an award that a strike or lock-out was taking place or is impending the Court may, after the President has appointed a special date for the hearing of evidence respecting the same, issue summonses to all persons and bodies suspected of having committed offences hereunder, and may deal with any such person or body as if specifically charged with the offences alleged.

(6) Such summonses may be served by registered letter or otherwise in the same manner in which summonses or notices may be served in connection with the enforcement of an award.

Objection was taken to the jurisdiction of the Court on the ground that section 15 of the Amendment Act dealt with one class of case, and section 101 of the principal Act with quite another. The Court, however, over-ruled the objection. The case having proceeded, counsel for the defendants argued that the agreement by which the slaughtermen were understood to be bound, was invalid. It had not been filed within thirty days of the date of the execution of the agreement by the Union, as required by section 24 of the Act of 1900. The agreement had been executed on the 11th July, 1904, and filed on the 11th day of the following month, or one day too late. The Court in its judgment upheld this view, and dismissed the applications.

As was feared, the action of the Wellington men in coming out proved contagious. The strike in the north had only been in operation three days when another strike took place at the Pareora Freezing Works, near Timaru. At first it was the slaughtermen's assistants who came out. These had been getting 7/- per day, and ordinary rate for overtime. Their demand was payment at the rate of time and a half for all overtime. The result of their action was that about forty slaughtermen had to cease work. Negotiations were at once commenced for the settlement of the strike, both by the Labour Department and by the Canterbury Frozen Meat Company. In two days' time the Company secured the necessary number of men to allow the butchers to resume work, and the trouble was, so far, at an end.

On February 22nd, almost immediately after the Wellington men had secured their advance in pay, the butchers at Pareora Works declined to start work unless they were paid at the rate of 25/- per 100 sheep. This demand was, of course, refused. According to the newspaper reports, these butchers were under the impression that when they struck work all the other slaughtermen employed in Canterbury would also come out. The latter,

however, had decided to take time to think about the matter. On Sunday afternoon, the 24th February, about 120 slaughtermen from the freezing works at Belfast and Islington, near Christchurch, met at the latter place to consider the situation. The officers of the Slaughtermen's Union were present for a short time at the meeting, with the object, it is stated, to discourage any proposal to strike, but a resolution was carried requesting the officers to withdraw. The meeting, which was held *in camera*, lasted several hours, and on the evening of the same day a deputation from it waited upon the Managing-Director of the Canterbury Frozen Meat Company and the Manager of the Christchurch Meat Company, and laid the Union's proposals before them. On the following day the Freezing Companies wrote to the Secretary of the Slaughtermen's Union expressing their willingness to confer at once with the officers and delegates of the Union to discuss proposals for a fresh agreement, and undertaking that the rates of pay arranged should be made retrospective to that date. They reminded the Union that they had not received a reply to their letter forwarded two days previously. This letter contained the following:—"We have to notify you that we cannot accept unsigned communications such as you yesterday handed to us with a disclaimer of responsibility on the part of your Union. All such communications must be officially signed by yourself as Secretary to the Union." The employers' efforts to negotiate only with the Union's officers failed. The men had determined that the Union as a body should have no part in the trouble impending. At this time the Companies had been receiving anonymous communications from several of the men stating that they would discontinue work if their demands were not granted, and on the morning of the 26th February, work was stopped throughout Canterbury. A great deal of pressure was brought to bear upon the strikers by outside parties to endeavour to arrive at an agreement with the employers, but fully a fortnight elapsed before the strike terminated. The persons who were chiefly instrumental in bringing about a settlement of the trouble were Messrs. T. H. Davey and G. Witty, M.H.R.'s. These gentlemen attended meetings of the slaughtermen, and it is probable that but for their persistent efforts, the strike would have lasted longer.

The men gained a victory, although they did not secure all that they demanded. The terms were similar to those agreed upon at Wellington, namely, an advance of 3/- per 100 sheep, but without the daily bonus which had hitherto been paid.

Trouble occurred among the slaughtermen employed in most of the other freezing works in the Colony, and, as in the case of the Wellington and Canterbury strikes, care was taken not to involve the unions. The Gisborne Freezing Companies, in reply to the demand of 5/- extra per 100 sheep, stated that they were willing "to re-open any negotiations for conciliation on their application which has been for some months pending the Court's sitting at Gisborne, and any agreement arrived at can then be submitted to the Court for its approval." The men, it was reported, were against waiting until the Court held a sitting in the district, and adopted the policy of killing two sheep per hour each instead of 8 or 10 per hour. Remonstrance against this course proving ineffectual, the employers intimated to the representative of the men "that further killing is suspended on the grounds that such an arrangement . . . is an illegal combination, and is taken with the intention of defeating the provisions of the existing award, and of forcing an increased rate of wages." The butchers accordingly ceased work and the struggle continued for about a week, when the employers agreed to advance the rate of pay 3/- per 100. In Wallacetown and Mataura (Southland) and at one or two other places, the men resumed work on terms similar to those fixed in Canterbury; at Burnside (Dunedin) the men accepted the terms of the employers, that the old rates should continue until a new award was made, which would be retrospective to the date of going back to work. At Auckland no strike occurred, but a union was formed, which filed a reference to the Court asking for better labour conditions.

Before the strike terminated in Canterbury, the men were brought before the Arbitration Court at the instance of the Labour Department, charged with committing a breach of the section just quoted. At Timaru 24 slaughtermens' assistants, at Christchurch about 170 slaughtermen, and at Gisborne 46 slaughtermen were found guilty of taking part in a strike, and were each fined £5.

The question as to the manner in which the fines could be enforced was dealt with first of all at Timaru. The solicitor for the Labour Department asked the Court to direct that the fines should be payable to the King, his application being made under sub-section "d" of clause 101 of the Arbitration Act, which reads:—

> If the order imposes a fine or costs it shall specify the parties liable to pay the same, and the parties or persons to whom the same are payable. Provided that the aggregate amount of fines payable under any award or order of the Court shall not exceed five hundred pounds.

The solicitor's view was that it might be that payment of the fines could not be enforced unless they were payable to the King. The reply of the Court was that it was not satisfied that there was power to make the fines payable to the King under the sub-section cited. It would appear that the strikers at first refused to pay the fines imposed upon them, and the Cabinet met for the purpose of considering what action should be taken in regard to the matter. The Attorney-General gave it as his opinion that if the men failed to make payment they could be imprisoned. He referred to the Amendment Act of 1905, section 15 of which declared that those who committed a breach of this section would be liable to a fine, and might be proceeded against under section 101 of the principal Act. "Where a fine is imposed, it is enforced by means of a certificate given under the hand of the Clerk and the seal of the Court, which, when filed in any Court having civil jurisdiction shall thereupon be enforceable in all respects as a final judgment of such Court. Therefore, a certificate in respect of the fines which have been imposed, may be filed in the Supreme Court." The Attorney-General further said that a fine was not a debt within the meaning of the Imprisonment for Debt Abolition Act, and that under the Supreme Court Code of 1882 the procedure was in the way of a motion of attachment, on filing and service of which the defendant had an opportunity of showing that he had paid the fine.

Acting on this opinion, the "Cabinet decided to take proceedings against the slaughtermen to enforce the payment of the fines inflicted by the Arbitration Court."

A few days after this decision was arrived at, a large number of the strikers were served with notices that application would be made at the Supreme Court for leave to issue a writ of attachment against them. The clause in the Code of Civil Procedure under which a writ of attachment may be issued reads:—

> When by any judgment of the Court a party is ordered to do, or abstain from doing, any act, not being the payment of a sum of money recovered in an action for debt or damages by any judgment of the Court, and fails to obey such judgment, the party entitled to the benefit of the judgment may, by leave of the Court, issue a writ of attachment. Notice of the application for leave to issue such writ shall be served on the party against whom it is intended to issue the writ.

The application for writ of attachment was made at the Supreme Court, Christchurch, on the 15th March, 1907, before Mr. Justice Cooper, who gave the following judgment:—

This is a motion made under rule 386 of the Code by the Inspector of Awards for leave to issue a writ of attachment against the above-mentioned John Catherall. The affidavit of the Inspector filed in support of the motion states that on the 6th March, 1907, Catherall was adjudged by the Court of Arbitration to have been guilty of the offence of taking part in a strike in contravention of section 15 of the Amendment Act of 1905, and was ordered to pay forthwith to the Inspector of Awards the sum of £5 as a fine for the said offence. A certificate, complying with the terms of sub-section (c) of section 101 of the principal Act, has been duly filed in this Court, and Catherall has not paid the fine which he was adjudged to pay.

Sub-section (c) enacts that for the purpose of enforcing payment of the fine and costs under any order of the Court of Arbitration the prescribed certificate may be filed in any Court having jurisdiction to the extent of the amount adjudged to be paid, and such certificate shall thereupon, according to its tenor, be enforceable in all respects as a final judgment of such Court in its civil jurisdiction.

Rule 386 of the Supreme Court Code provides that when by any judgment of the Court a party is ordered to do or abstain from doing any act, not being the payment of a sum of money recovered in an action for debt or damages by any judgment, the party entitled to the benefit of such payment may, by leave of the Court, issue a writ of attachment.

The certificate is in the following terms:—"This is to certify that on the 6th March, 1907, the Court of Arbitration sitting at Christchurch did order that the sum of £5 should be payable by John Catherall, of Belfast, slaughterman, to James Shanaghan, of Christchurch, Inspector of Awards, and that the said amount is now payable to the said Mr. James Shanaghan as such Inspector."

"The Imprisonment for Debt Abolition Act, 1874," abolished arrest or imprisonment for making default in payment of a sum of money, but, among other exceptions from its provisions, there is excepted default in payment of a penalty or sum in the nature of a penalty in respect of any contract; but no person shall be imprisoned in any case excepted from the operation of the Act for a longer period than one year.

In McWilliam's case (1 Sch. and Lef. 169, page 174), quoted with approval in re Freston (11 Q.B.D. 545, C.A.), Lord Redesdale, in discussing the principles governing the attachment of a person for disobedience of a judgment of the Court, said, "There can be no doubt that the thing to be considered is not the form of the process, but the cause of issuing it; if the ground of the proceeding be a debt, it is a process of debt; if the ground be a contempt, as, for instance, disobedience of some order of the Court where the object was not to recover a debt by means of the process, the consequence of such a process is in some degree of a criminal nature."

Therefore, in determining whether process of attachment of the person can now issue, the Court must look to the cause of issuing it; if the object is merely to recover an ordinary civil debt, then attachment cannot issue; if it is for the object of enforcing payment of a sum of money, which is not a debt but a penalty, and is not a penalty in respect of any breach of contract, then, although the effect of the filing of the certificate is to render it enforceable according to its tenor in all respects as a final judgment of the Court in which it is filed, attachment may issue if the Court in which the certificate is so filed has power to issue a writ of attachment. The certificate in the present case having been filed in this Court, and this Court having jurisdiction to order a writ of attachment where the judgment is not for money recovered in a action for debt or damages, the Court has jurisdiction in the present case to grant leave to issue the writ if it is sufficiently apparent that the sum payable by the defendant is a penalty other than "a penalty in respect of any contract."

Now, section 15 of the Amendment Act of 1905 expressly enacts that any worker who shall take part in a strike shall be guilty of an offence, and shall be liable to a fine. If there were no other provision in the section the worker so offending could be indicted for a misdemeanour. The section, however, continues, "And may be proceeded against in the same manner as if he were guilty of a breach of an award." This part of the section defines the procedure, and gives the Court of Arbitration jurisdiction to deal with the alleged offence upon an application made under section 101 of the principal Act. It does not alter the character of the offence, but merely prescribes the procedure by which the offender is to be prosecuted.

Therefore, the fine, which is unpaid, is not of the nature of a debt or damages, or of a penalty for breach of contract, but is a punishment awarded against the convicted offender for the offence for which he has been convicted. It is in the strict sense of the term a "penalty."

Sub-section (c) of the section 101 is also a procedure section. It does not convert the penalty into a judgment for debt or damages. All it does is to provide that the penalty shall be enforceable on the civil side of the Court. A writ of attachment, although the process is in some degree of a criminal nature, is a process by which the Court in its civil jurisdiction enforces the performance of an act which a party by its judgment is ordered to do, when such act is not the payment of a sum of money recovered in action for debt or damages.

The judgment in the present case is not for the payment of a sum of money recovered in an action for debt or damages, and is therefore within Rule 386 of the Code. It is for a penalty adjudged to be paid by way of fine by a person who has been guilty of a statutory offence, and therefore it is excepted from the provisions of "The Imprisonment for Debt Abolition Act, 1874."

The application is therefore granted, the applicant to have leave to issue a writ of attachment directed to the sheriff of this district to arrest John Catherall, and commanding the said Sheriff to bring John Catherall before the Court at half-past 10 o'clock on the forenoon of Saturday, the 16th March, inst., and to keep him in the meantime in safe custody as may be by the law allowed.

At the conclusion of the sitting of the Court, the Crown Prosecutor arranged with the defendants that they should appear at the Court on the following day, and that in the interval they would not be arrested. When the defendants appeared again at the Court, the Crown Prosecutor intimated that satisfactory arrangements for paying the fines had been made, and that, in consequence, he had directed the Sheriff not to proceed with the writs of attachment. It was subsequently stated in the newspapers that the officers of the Government had been experiencing considerable difficulty in collecting the fines, and that most of the defaulters had been at Timaru. Two months after it had been arranged by the Crown Prosecutor for payment of the fines, the "Lyttelton Times" reported that some of the men, presumably Australians, intended to default and leave by the steamer for Australia. "The Labour Department at Christchurch, therefore, acting on instructions from Wellington, prepared a little surprise for them, and a warrant for arrest

was issued against one of the suspected men. . . Whether the man became aware of the proceedings is not known, but he probably received a final inducement to pay. At all events, he paid the amount owing just before the warrant was to have been executed. There were others about to leave the Colony, and orders were taken out against their wages held by the Company." Referring to the strike in his annual report for 1907, the Secretary for Labour says: "Some have paid the fine in full; some are paying by instalments to the Labour Department."

The Labour Department appeared to find it only necessary, within three months, to apply a second time for a writ of attachment. This second application, in which a Timaru striker was concerned, was heard before Mr. Justice Williams, who delivered his judgment at Dunedin on the 17th June, as follows:—

The 15th section of "The Industrial Conciliation and Arbitration Act Amendment Act, 1905," declares that any worker who takes part in a strike shall be guilty of an offence, and shall be liable to a fine, and may be proceeded against in the same manner as if he were guilty of a breach of an award. The 101st section of "The Industrial Conciliation and Arbitration Act" of the same year deals with the enforcements of awards, and provides—sub-section (b)—that if any party on whom the award is binding commits any breach thereof the Inspector of Awards, or any party to the award, may apply to the Arbitration Court for the enforcement of the award. Sub-section (c) provides that on the hearing of such application the Court may by order impose such fine for the breach of the award as it deems just. Sub-section (d) provides that if the order imposes a fine it shall specify the parties liable to pay the same and the parties or persons to whom the sum is payable. The respondent was a worker, and under section 15 of the Amendment Act was fined £5 by the Arbitration Court for taking part in a strike, and sub-section (e) of section 101 provides for the enforcement of payment. It enacts that for the purpose of enforcing payment of the fine and costs payable under any order of the Court a certificate in the prescribed form specifying the amount payable and the respective parties or persons by and to whom the same is payable, may be filed in any Court having civil jurisdiction to the extent of such amount, and shall thereupon according to its tenor be enforceable in all respects as a final judgment of such Court in its civil jurisdiction. The certificate required has been filed in the present case in the Supreme Court. It certifies that the Court of Arbitration ordered that the sum of £5 should be payable by the respondent to the applicant, and that the said amount was then payable by the respondent to the applicant.

The question is, whether by virtue of sub-section (c) of section 101 a writ of attachment can issue against the respondent so that he can be committed to prison for making default in payment of the fine. If he can be so committed, it is only because by making default in payment of a penalty, or sum in the nature of a penalty, he comes within the first exception in section 3 of "The Imprisonment for Debt Abolition Act, 1874," and is punishable accordingly. Unless he comes within the excepted cases in that section no person can be imprisoned for non-payment of a sum of money. Section 3 was adopted from section 4 of the English "Debtors Act, 1869." The effect of section 4 has been discussed in various cases. In Middleton v. Chichester (6 Ch. 152),

Lord Hatherly says that the exceptions in the section all relate to debts, the incurring of which was in some degree worthy of being visited with punishment, and that in every case there is something of the character of delinquency pointed out. In re Smith, Hands Andrews (1893, 2 Ch. 1), Kekewich, J., says that the remedy by committal or attachment under "The Debtors Act, 1869," is punishment for an offence, and he distinguishes it from a remedy to enforce payment of a debt. Lindley, L.J., in delivering the judgment of the Court of Appeal in the same case says: "The punitive character of section 4 of the "Debtors Act, 1869," which was pointed out in Middleton v. Chichester, has been since so often recognised that it cannot now be questioned." After referring to some cases he goes on to say, "In these cases, however, the fact that a commitment under section 4 is not to be regarded simply as a form of civil process, but as punitive, is distinctly recognised." In Cobham v. Dalton (L.R. 10 Ch. 657), Melish, L.J., had said with reference to this section that arrest for debt was intended as a means of enforcing payment, and not as a punishment. This was controverted by Lindley, L.J., and Cobham v. Dalton was dissented from. So also was it dissented from in in re Edgecome, ex parte Edgcombe (1902, 2 K.B. 403). In the case Vaughan Williams, J., makes it perfectly clear that the exceptions to section 4 of the Act of 1869 are all punitive, and are not to be treated as a process for enforcement of payment of the debt.

Now sub-section (e) of section 101 does not pretend to give power to punish for non-payment of the fine. It merely prescribes what may be done for the purpose of enforcing payment. As shown by the English cases, punishment by imprisonment for default in payment is not a process for enforcing payment. Sub-section (e) prescribes that the certificate according to its tenor is to be enforceable in all respects as a final judgment of the Court in its civil jurisdiction. Now a fine is not enforceable by the Court in its civil jurisdiction. The order for payment, therefore, is to be treated not as a fine but as a final judgment in a civil action. It is to be enforced according to its tenor. The tenor of it simply is that £5 was payable to the applicant by the respondent. The Arbitration Court had ordered the sum to be paid by the respondent to the applicant.

Where a Court of competent jurisdiction has ordered a man to pay a sum of money to another, that is a debt due from one to the other: Per James, V.C., in Hewitson v. Shermin (L.R. 10 Eq., p. 54). The section contemplates that the order is to be enforced as if it were a final judgment for the recovery of the debt. That is made perfectly clear by the proviso in sub-section (e) and sub-sections (f) and (g), which speak of the judgment debtor and judgment creditor, prescribed remedies against the property of the judgment debtor for the recovery of the debt. For the purpose of enforcing payments sub-section (e) does not appear to me to claim any higher than a claim for an ordinary debt. Even, however, if for the purposes of the enforcement it could be treated as a penalty it is none the less a debt payable to the claimant by virtue of the order of the Arbitration Court.. If no other remedy had been given he would have had to sue for it in a Court having civil jurisdiction and have recovered it in an action for debt. Actions by common informers for penalties are actions for debt (English Encyclopedia of Law, Title "Debt"), and by Rule 386 of the Supreme Court Code a writ of attachment cannot issue for the non-payment of money recovered in an action for debt.

If default in payment was to be punished, why may the certificate for a sum within the jurisdiction of the Magistrate's Court be filed in a Court which has no power to punish? I find nothing in sub-section (e) to suggest that the Legislature intended that, in the event of default of

payment of a fine inflicted by the Arbitration Court under section 101, the person in default should be punished by imprisonment. When the Legislature intended that default in payment of a fine inflicted by the Arbitration Court for an offence should be punished by imprisonment it has expressed itself very clearly. Sections 81, 107, 112, 113, and 118, of the principal Act create offences punishable by fine. Section 103 gives the Arbitration Court exclusive jurisdiction to deal with these offences. Proceedings are to be taken before that Court as summary proceedings are taken under "The Justices of the Peace Act, 1882." When the Court makes an order for payment of the fine it is filed in the nearest Magistrate's Court, and is thereupon to be enforced as a final judgment, conviction, or order made by a Stipendiary Magistrate under the summary provisions of "The Justices of the Peace Act, 1882." That brings into play sections 91 and 97, inclusive, of the latter Act, and makes default in payment punishable by imprisonment for a period not exceeding the terms mentioned in the scale set out in section 96. According to that scale, where the amount exceeds £1 but does not exceed £5, one month is the maximum.

If the contention of the applicant is correct, that non-payment of a fine inflicted under section 101 of the Act of 1905, can be punished by imprisonment under sub-section (e), the maximum term for the most trivial fine would be one year, the period beyond which by the 3rd section of the Act of 1874 no person can be imprisoned for non-payment of money. Further than this, if a man has served his term of imprisonment under section 96 he is no longer liable to the fine. If, however, he is imprisoned under a writ of attachment his property appears still to remain liable: The Queen v. Hemsworth (3 C.B. 744), Roberts v. Ball (3 S. M. and G. 168; 24 L. J. Ch. 471). The Legislature certainly considered the offences under the sections mentioned in section 103 more serious than those under section 101, and the startling result would follow that more serious liabilities would be incurred for the lesser offence than for the more serious one. The Legislature had clearly before it two classes of fines—those inflicted under section 101 and those under the sections mentioned in section 103. As to the latter, it made express provisions for punishment by the imprisonment in default of payment. As to the former, it made no provision, but enacted that payment should be enforced practically as if they were civil debts. It would have been simple enough to have placed both classes in the same category, and the fact that the legislature refrained from doing so is the strongest possible reason for holding that it has no intention that imprisonment should follow on default of payment of a fine inflicted under section 101. The law must be clear and not a matter of doubtful inference if the liberty of the subject is to be interfered with.

In a former case Mr. Justice Cooper took a contrary view to that which I now take. He, however, was under a great disadvantage in having had only one side of the case presented to him. I feel justified, therefore, in differing from his conclusion, although if he had heard the case argued as I have heard it, and his judgment had followed on such an argument, I should have greatly hesitated before doing so. I have the satisfaction of knowing that if my decision is wrong the Court of Appeal can set it right very shortly. If, on the other hand, there is a hole in the Act requiring a patch, Parliament is at hand to patch it. Motion refused.

As will be seen, this judgment is the reverse of that given by Mr. Justice Cooper. It was appealed against by the Labour Department. It was thought by many people, including some

lawyers of repute, that the judgment would be upheld by the Appeal Court, and it was apparent that, if the strike clauses were not to become a dead letter, an amendment to the Act would have to made so that strikers who failed to pay their fines would be imprisoned, or unions, whose members were concerned in a strike, would be liable to a fine of £500.

The Court of Appeal, however, settled the difficulty by reversing the decision of Mr. Justice Williams. The following is the judgment of the Chief-Justice (Sir Robert Stout), in which Mr. Justice Chapman and Mr. Justice Button concurred:—

The question raised in this appeal has given rise to a conflict of judicial opinion. It is whether the Supreme Court can issue an attachment to enforce an order of the Court of Arbitration established under "The Industrial Conciliation and Arbitration Act, 1905." This Court of Arbitration has no jurisdiction to entrain suits for debt or damage, but it makes awards, and can fine those who infringe the awards made. By the amending Act, "The Industrial Conciliation and Arbitration Amendment Act, 1905," certain provisions were made regarding strikes and lock-outs, it being enacted, inter alia, that any worker, etc., who shall strike, etc., shall be guilty of an offence, and shall be liable to a fine, and may be proceeded against in the same manner as if he were guilty of a breach of an award. The fine in the case of a worker is not to exceed £10. The proceedings for a breach of an award may be instituted by an inspector of award applying for the enforcement of an award. The Court, on the application of an inspector, may fine for the breach. The Arbitration Court has not, however, been granted any power to enforce its fines. Sub-section (e) of Section 101 of the Act provides that a certificate under the hand of the clerk and seal of the Court may be filed in any Court having civil jurisdiction to the extent of the fine, and shall thereupon, according to its tenor, be enforceable in all respects as a final judgment of such a Court in its civil jurisdiction. Up to the final certificate there is no doubt the matter was a criminal matter (see Mellor v. Denham, L.R. 5, B.D. 467, Regina v. Paget, L.R., 8, O.B.D., 151). But the Statute states its enforcement is to be as if it were a final judgment of the Court. In this case, as the certificate was filed in the Supreme Court in its Civil jurisdiction, reference must therefore be made to the code of civil procedure to learn how a final judgment on the civil side of the Supreme Court is enforced. Rule 330 of the code says:—"Judgments may be enforced by any one or more of the following writs as hereinafter provided, viz., a writ of sale, a writ of possession, a writ of attachment." Rule 342 provides that an order may be enforced in the same manner as a judgment to the same effect. Then comes Rule 386 which states when a writ of attachment may be issued. It states: "When by any judgment of the Court a party is ordered to do or abstain from doing any act, not being a payment of a sum of money recovered in an action for debt or damages by any judgment of the Court, and fails to obey such judgment, the party entitled to the benefit of the judgment may, by leave of the Court, issue a writ of attachment, etc." It appears to me that unless it can be said that this order was a judgment for the payment of a sum of money recovered in action for debt or damages, it is a judgment or order that can be enforced by attachment unless there is some statute preventing attachment issuing. If it is an order for payment of a fine, it was admitted that the "Imprisonment for Debt Abolition Act, 1874," would not prevent the

attachment issuing. The whole question, therefore, is narrowed to this: Has this order for the payment of a fine become, because of the provisions of Sub-section (e) of Section 101, a judgment in an action for debt or damages? If it has not, then it appears to me clear that an attachment can issue under Rule 386. Was the character of the order changed by compliance with that Sub-section (e)? It has to be enforced according to its tenor as a final judgment of the Court in its civil jurisdiction is enforced, but, as has been pointed out, some final judgment in the Court's civil jurisdiction may be enforced by attachment. It is not enough, therefore, in my opinion, to say that the order has become a judgment in an action for debt or damages, or can only be enforced as a judgment in an action for debt or damages. Can this be said even if it is assumed that the order has been transformed into the judgment of the Court in its civil jurisdiction, and not merely an order to be enforced, a matter of procedure, as a civil judgment is enforced? Sub-section (e) does not directly say so. The proviso to Sub-section (e) is relied on, and it is as follows:—"Provided that for the purpose of enforcing satisfaction of such judgments wherever there are two or more judgment creditors thereunder, process may be issued separately by each judgment creditor against the property of his judgment debtor in like manner as in the case of separate and distinct judgments." This proviso can only be invoked in aid of such an interpretation by the use of the words "judgment creditor and judgment debtor." They are not inapt words to use in a judgment in a civil action where the judgment is for payment of money, and the proviso was no doubt necessary to enable those entitled to the fines to more effectually recover them. I am of opinion that the use of these words is not sufficient to transform the order, or, if it has become a judgment, into a judgment for money recovered in an action for debt or damages. This being my view, it follows that in my opinion the appellant is entitled to avail himself of the provisions of Rule 386, as the order has not been transformed into a judgment for money recovered in an action for debt or damages, nor has it to be enforced as if it were a judgment in that form of action. In my opinion little aid can be got from a consideration of other clauses or sections of the "Arbitration Act" in the interpretation of Sub-section (e), but even if a reference were made to the history of the legislation, in my opinion, it would be seen that the Legislature assumed that under similar provisions attachment could issue. The question is really: What does this sub-section provide? It has not been suggested that any other section modifies or varies this sub-section (e). It may be that it appears strange that a fine of £10 can be enforced by an attachment which might entail imprisonment for as long as twelve months, whilst a fine under some sections of the Act up to a much larger amount than £10 may not be visited with such a lengthy imprisonment (see Section 163). On the other hand the breach of an award may lead to a fine of £500 (see Section 97). Can it be that these large fines of £500 should not entail possible imprisonment, whilst minor offences under sub-section (f) of Section 81 might entail imprisonment. Is the failure to attend as a witness for which a fine of £10 is imposed, of less moment than the breach of an award for which a fine of £500 is imposed? And yet if the Act is not construed as we have construed it for the minor offence imprisonment may be imposed, but not for the latter, though the fine is fifty times larger. Other examples might be given. If, however, other provisions of the Act were considered they would not show that the interpretation which I have put on sub-section (e) of Section 101 was contrary to what might be termed the general scope of the Act. Whilst, therefore, I concur in the statement that before the power of attachment ought to be deemed applicable the statute must be plain and clear, I am of opinion that the statute read in its ordinary meaning intended to

give and did give all the power to enforce an order for payment of a fine that Rule 386 of the code of civil procedure gives, and that the order for payment of a fine did not become a judgment for money in an action for debt or damages so as to bring it within the exception mentioned in the Rule. There have been many cases cited and many legal by-paths trodden in the argument, but in my opinion the issue is as I have stated it, and little or no aid can be got in interpreting the statute from a perusal of these clauses or from exploring these by-paths. I am of opinion that the appellant must succeed, and the judgment below must be reversed with a direction to the Supreme Court to issue attachment.

For some months the strike was the subject of a great deal of discussion by the Press, employers, and others. The only Trades Council in the Colony reported to have expressed sympathy with the slaughtermen and congratulated them on their victory, was the Wellington Council. The attitude of this Council was perfectly intelligible. It meant that the action of the slaughtermen in striking for higher pay, notwithstanding that a tribunal existed for the express purpose of hearing and adjudicating upon industrial troubles, was a commendable one. The attitude of the other Trades Councils, and of many of the Labour Unions in New Zealand, was not quite so intelligible. Some of these, or at any rate, their mouthpieces, have, since the strike, openly declared their faith in the Act and in its efficacy, and yet, while the strike lasted, were absolutely silent. A few newspapers appealed to the Trades Councils to express their disapproval of the strike and to use what influence they had to end it, but the appeal was made in vain. It is hardly worth while, perhaps, to indulge in any speculations regarding the policy of the Labour Party at this critical period in the history of the Arbitration Act. It may be there was a division of opinion among the unions, and that it was considered better that they should play the part of interested spectators. There can be little doubt, however, that the Labour Party could have exerted sufficient influence to put a speedy end to the strike if it had felt so inclined.

The Labour Party was very indignant at the statements made by the Minister for Labour and the Attorney-General (Dr. Findlay) that the chief instigators of the strike were Australians. When the trouble began at Wellington, the Minister for Labour said:—"The reports of my officers show that a large number of Australians are connected with this strike, and they openly avow that they did the same in Melbourne and got an increase of five shillings. . . It is unfortunate that many of the local men have been brought into the affair, but all those who have taken part are liable, and I very much regret such a thing should have occurred, as we had begun to think that in New

Zealand the days of strikes were over." The Attorney-General had, it appears, described the Australians as "birds-of-passage," and had stated that "he did not like to give a true designation to them, as it might be invidious." The Trades Councils' Conference, when sitting at Easter, 1907, passed a resolution reprobating strongly "the uncalled-for, offensive, and contemptible references made by the Hon. Dr. Findlay and the Hon. J. A. Millar to our fellow-workers of Australian extraction," and stating "that nothing can affect our fraternal sympathy with them in their struggles for economic justice." Speaking at Dunedin, the Minister for Labour adhered to the statements he had made, and subsequently at Christchurch he said to a reporter:—"I have been informed . . . on what I believe to be reliable authority, that it was part of the agreement with the freezing companies in Australia that they should give the men 25/- a hundred if the men raised the rate to the same price in New Zealand, so that the Australian companies should be able to work on even terms with the New Zealand companies." Mr. A. H. Cooper, Secretary to the Wellington Slaughtermen's Union, and a leading trade-unionist, asserted that "so far from the Australians having fomented the strike, they had rendered the greatest assistance in helping to bring the New Zealanders to a reasonable frame of mind, and, in fact, had brought about a settlement at Wellington."

Apart from these and other strangely conflicting statements, there appears to be but little information obtainable to enable one to say precisely to what extent the Australians were responsible for the strike. It may be explained, however, that many of the men who are employed at slaughtering work in both Australia and New Zealand undoubtedly are "birds-of-passage." When the season is over in the one country, they move to the other to engage in the same kind of work, and are thus kept fairly fully employed. It may further be stated that included among these are a number of New Zealanders. At the commencement of the strike at Wellington, one of the men stated to a reporter that there had been a hint that the men from Australia were at the bottom of the trouble, but that that was not the case. "In the Australian states, where the 25/- rate obtains, it was the New Zealand men who had struck out for the wage in the first place, and got it," Whether the Australians were the actual instigators of the strike or not there is not a shadow of doubt that the New Zealand men were in full sympathy with the movement, and that without this sympathy the strike, or rather strikes, would never have taken place.

CHAPTER XVI.

THE LABOUR DEPARTMENT.

Though reference has, in previous chapters, been frequently made to the Labour Department, it seems to me that this work would be incomplete without a special chapter being devoted to a branch of the civil service so closely associated with the working of the Arbitration Act.

During recent years the Department has been subjected to a considerable amount of criticism, but this, as is well known in New Zealand, has been largely due to some of the actions and peculiar views of the Department's chief officer, Mr. E. Tregear. The Secretary for Labour has never disguised the fact that he has regarded his department as one whose duty it is to watch the interests of the workers with little regard for the welfare of the employers. It is only necessary to refer to his own words, either written or spoken, for confirmation of this statement. The complaints made against Mr. Tregear, as may be presumed, have come chiefly from the employers. In 1903 the Employers' Federation passed a resolution in which the following occurs:—"It is now apparent that the Labour Party, led by the Secretary of the Labour Department, has decided on a most extreme socialistic platform, which has as its ideal 'one employer only and that employer the State.' This meeting of the Federation considers that it cannot in justice to its members, and in the interests and well-being of our industries, submit to this continual and unwarranted interference." Before the Labour Bills Committees of both Houses of Parliament, in 1903, the President of the Employers' Federation referred to the distrust felt by employers in the Department, and to their opinions that the Labour Acts were not being administered in an impartial manner. Mr. Tregear, in giving evidence before one of the Committees referred to, replied to the attacks made upon him and said:—

> In last night's "Evening Post" there is an article headed "A New Detective Bureau"; in answer to that, all I can say is, that I do not see there is anything wrong in being called a detective, because the duty of a detective is to bring criminals to justice.

Mr. Tregear has always been a great believer in and champion of the Arbitration Act, but in a remarkable memorandum

entitled, "High Wages and their Exploitation," addressed in 1904 to the late Minister for Labour (Mr. Seddon), he has to acknowledge that the Act has been unable to control the operation of certain factors which have to a large extent neutralised the increase in wages awarded by the Court. Some extracts from the documents are worth quoting. After stating that the Arbitration Act has "drawn the attention of the civilised world to the progressive legislation of this Colony," he says:—

> It would . . . be little short of a world-wide calamity should anything cause false inferences to be drawn from the effects or results of institutions working under any but fair and impartial conditions. The New Zealand Arbitration Act is not working under such conditions, nor is its beneficial power available to the full in the cause of public utility. The work of the Court is being neutralised by malignant collateral action. It is in the position of a single regiment or division of an army sent far into the enemy's country without reserves or supports. Or, to use a still closer simile, it is like a fair edifice the foundations of which are being destroyed by cunning miners working from every side.

Mr. Tregear proceeds to show who the "cunning miners" are. He says that "the general effect of the Act has been to benefit the whole community"—employer, worker, and general public—but this effect is "rapidly becoming neutralised, and soon only the empty shell of an apparent prosperity will be left us if the unbridled covetousness of a few be not regulated and checked. Some of the necessaries of life cost more than in former years, their price is rapidly advancing, and this out of all proportion to the rise in wages of producers. . . There has been no fair ratio between the rise in wages and the rise in prices." "There is a third hand in the game," he affirms, "and it is this third man—the non-producing ground-landlord of city and suburban property—who alone will rise a winner in the end." It is the excessive rent which is "the chief devourer of the wages of the worker and of the profits of the employer." "A greedy rack-renting system . . . is unauthorised taxation by private persons; it is tribute to a conqueror, and ransom of a captive." The high rents in the city of Wellington are commented upon, and we are told that "the tribute levied on the struggling colonists of New Zealand" by an absentee landlord "would, if capitalised, 'stagger humanity.'" Mr. Tregear thinks that the increase in some of the necessaries of life is more defensible than unfair rentals, "because some part of the profits made in such cases goes to producers." The operative or labourer, however, "is seldom the owner of the means of production," and while mutton is dearer than it was ten years

ago, "the increased cheques for frozen meat, freights, commissions, etc., do not come his way." But it is the high rents to which Mr. Tregear directs special attention, and he urges the Government "to take into consideration the question of legislating for the acquirement of suburban lands and the housing of the citizens." Mr. Tregear concludes:—

It is beyond doubt that the advantages bestowed by progressive legislation are gradually being nullified, and will eventually be destroyed by certain adverse influences. Those influences must be sought out and neutralised fearlessly and effectively in the interests of all classes of workers—i.e., of the vast majority of the citizens of the Colony.

It would have been surprising if Mr. Tregear's vigorously-worded memorandum had not met with criticism. To this I propose to make some reference, but before doing so would point out that Mr. Tregear's views regarding the effects of the Arbitration Act, as quoted from his memorandum to Mr. Seddon, hardly agree with those he is stated to have furnished to the "Social Progress Year Book" (U.S.A.) for 1904, the same year in which the memorandum was written. While in his New Zealand production he deplores the nullifying of the benefits obtained from the Act, and goes so far as to say that "soon only the empty shell of an apparent prosperity will be left," in his contribution to the American publication he writes:—

Of course much difference of opinion exists as to the beneficial or retarding effects of the New Zealand labour laws. In almost every country the working classes form at least nine-tenths of the population, and here the artisan and labourer branches are in considerable majority. These have immensely benefited by the labour laws, and acknowledge it. Employers who have had to pay the higher wages are not so loud in praise of the measure, but that is only natural. It is difficult for them to realise that **the high wages paid keep coming back to them in a hundred ways, in the enhanced spending power of the population and the general prosperity of all businesses.**

It is for Mr. Tregear to say whether the material written for home consumption or that supplied to his American friends represents his correct views on the subject.

The severest criticism of Mr. Tregear's memorandum appears to have come from the "New Zealand Times" (Wellington). That paper said that the memorandum was a "most peculiar pronouncement to be allowed from the administrative head of a Government Department. Some persons," it continued, "reading the onslaught made upon landlords, and, meeting such phrases as the 'unbridled covetousness of a few,' and 'unauthorised taxation by private persons,' will wonder whether the writer is referring to Turkey or to New Zealand; others may imagine that they are reading the manifesto of a Labour Union

drawn up in the choicest language of the agitator, appealing to bias and prejudice instead of to reason."

Some notice must be taken of a letter Mr. Tregear wrote about two years ago to an American named Benson. This letter, as it appeared in the New Zealand papers in May, 1906, was as follows:—

Dear Mr. Benson,—I hope you will pardon me for not at once acknowledging the receipt of your book. Believe me, I feel deeply grateful to you. If I did not reply at once it was because I wanted to ruminate over your arguments. I am one of those so fully convinced of the truth of what you say that I sometimes feel we Socialists are the only sane people in a world of lunatics. Of course the world retorts that it is we who are mad; that is the way things go in "mental hospitals." Nevertheless, there is great hope for us. Our ranks are being augmented every day in a most astonishing way. I see in my own lifetime the advent of social rights coming up like a thunderstorm against the wind. Here in New Zealand we keep pegging away, sapping little by little the foundations of one monstrous privilege after another. We got arbitration upon its sturdy legs, and I know you have followed its career with interested eyes. Now we have again a crusade against the landlords in cities and suburbs, because every advantage in wages, etc., gained for the workers by arbitration is being exploited and neutralised by robber rents. We are taking voluntarily, by sale, or compulsorily, lands near towns for workmen's homes, to enable the holder to erect houses, etc., thereon, secured, of course, on the land and improvements themselves. The result is, no country is prospering in the world at the present time like New Zealand. Let no man think, however, that our prosperity leaves us without evils to combat. We have barely touched the fringe of the soiled economic garment. So long as the wage system endures, so long as capital holds the land, machinery, and other means of production, so long is the bulk of our population only a collection of well-fed, well-clothed slaves. I am glad to see in your book you have driven your shafts right at the heart of the matter.

The only question is this:—In a world consisting of men trained in the wolf laws of the capitalist system, is it best to accept nothing, to let the evils 'stew in their own gravy?' Or shall we slowly feel our way—by national railways, telegraphs, insurance, steamers, unions, etc.—as we are doing in New Zealand, and gradually educate those who differ through their prejudices by conviction? This is evolution. But you understand that, in doing so, we also build our own difficulties as we go. We have made our factories clean and pleasant places to work in, looked after the wages, the hours, and the overtime pay, the holidays, the health of the women and children. Result—Carelessness as to the real problems; fatuous, contented acquiescence in things as they are. The wage-earner satisfied with his position and ready to consider Tregear fuming over economic matters of little importance. Only when I show them how they are being robbed does the 'pleasant afternoon' feeling give way sufficiently to take them to the ballot-box. When, when, when will the great American (we may add Australian) people learn that the Republican (Conservative) is nothing, and that there is only one real issue—viz., that between the robber and his victim? Moreover, that the ballot-box is the only social weapon! Long life and health to you. May you strike many a giant blow for the great cause.—Yours always,

EDWARD TREGEAR,
Secretary, Department of Labour.

A number of newspapers took Mr. Tregear severely to task for his letter. The "Otago Daily Times" said:—

> The contents of the letter might be wholly disregarded if they merely represented the wild views of the political agitators . . . . but it is impossible to dismiss them so slightly when they have been penned by a public servant, the permanent head of a Department of which it is the duty to administer some of the more important of the laws of the Colony fairly as between employer and employee, capitalist and wage-earner. For the community will observe that the Secretary of the Department of Labour has, in the most outspoken way, expressed his direct adhesion to a programme of straight-out Socialism.

The "Dunedin Evening Star" wrote:—

> No one occupying a responsible position as a civil servant, more especially one at the head of such an important department as Labour, can consistently with his official position be allowed to launch out at large in the field of political and social controversy.

Other papers wrote in a similar strain, but some—notably the "Lyttelton Times" and "New Zealand Times"—warmly defended Mr. Tregear. The organs named held that as the letter was a private one Mr. Tregear had a perfect right to express his views in the manner he did. They also said that Mr. Tregear, in his capacity as Secretary for Labour, held the scales fairly between employer and worker.

The New Zealand Employers' Federation, which had previously complained of the attitude of Mr. Tregear towards the employers of the Colony, wrote a letter to the Hon. W. Hall-Jones (who, at the time, filled the office of Premier), on the subject of the letter. The Federation took the view that it did not matter that the letter was a private one; it was sufficient that the views contained in it, and publicly acknowledged, were held by the head of one of the most important departments in the public service. The Federation was strongly of opinion that anyone holding such views was totally unfitted to hold so responsible a position as that of Secretary of Labour. The position, it continued, should be filled by one who was strictly impartial, and who possessed tact, judgment, and sound common-sense, and one, moreover, who had "the entire confidence of all parties." The Federation asked for Mr. Tregear's removal.

In his reply to the Employers' Federation, the Premier said that the letter complained of was a private one, that it was not signed by Mr. Tregear as Secretary for Labour, nor in any way sent in his official capacity, and that the copy of the letter published throughout the Colony was not a true copy of the original, but a garbled version of it. The Premier gave one short sentence as it appeared in the original letter, and the corresponding sentence in the letter published in New Zealand,

with the view of showing that liberties had been taken with the former, and concluded:—

> No accusation or even inference has hitherto reached the Government that Mr. Tregear has failed in carrying out his official duties with discretion and impartiality. I cannot concur in the principle you expound that the Government has a right to interfere with the private expression of personal opinions held by its officers. Under the circumstances I do not consider it my duty to take action as you suggest.

The Premier's defence of Mr. Tregear cannot be regarded as successful. This is especially the case when it deals with the question whether the published version of the letter was, in the main, correct or not. The Premier gives one instance of a variation from the original, and says there are others. Why not give the others? But let Mr. Tregear himself be heard on the question as to the authenticity of the published letter. About six weeks before the Employers' Federation communicated with the Premier, Mr. Tregear wrote the following letter to the "Christchurch Press," in reply to a leading article which appeared in that journal:—

> Department of Labour, 17th May, 1906.—Sir,—In your issue of the 16th May appears a leader on the subject of a letter I wrote to Mr. Horace Benson, of the United States, in July, 1905. **I have to reply that the letter (excluding typographical errors) is mine,** but that it was private, and written as acknowledgment of a book on Socialism. It was not written officially, as the concluding phrase, "Yours always," would show; nor was it signed by me as Secretary for Labour, **as the copy (luckily preserved)** proves. I liked Mr. Benson's book very much, and told him so, but **his having allowed publication of my letter was indiscreet.** I have yet to learn that being a public servant prevents one writing letters to friends, and that this was a private letter, its wording and internal evidence would prove to any fair-minded man.—Yours faithfully, Edw. Tregear.

In view of such an acknowledgment as this it would surely have been infinitely better if Mr. Tregear and his friends had only attempted to settle the question whether anyone holding such views as were expressed in the letter was fit to fill the office of Secretary for Labour. On the latter point the "Christchurch Press" said:—

> How can he (Mr. Tregear) act impartially when he regards the taxpayers of New Zealand as divided into two classes—"robbers" on one side, and "victims" on the other, and he himself poses as the champion of the "victims"?

The portions quoted in previous chapters from the Labour Department's Annual Reports will themselves show whether or not Mr. Tregear regards himself as the special guardian of the worker.

In the capacity of Registrar of Industrial Unions, Mr. Tregear has more than once exceeded his function. Clause 10 of the

Arbitration Act provides that "in no case shall an industrial union be registered under a name identical with that by which any other industrial union has been registered," and clause 11 empowers the Registrar to "refuse to register an industrial union in any case where he is of opinion that in the same locality or industrial district and connected with the same industry there exists an industrial union to which the members of such industrial union might conveniently belong." The same clause requires that the Registrar shall "notify such registered union that an application for registration has been made." Notwithstanding these provisions, Mr. Tregear registered (about 1905) a union named the "Otago and Southland Tailors' and Shop Tailoresses' Union," although in the same district there had been a Tailoresses' Union in existence for about fifteeen years. It appears that the Otago Tailors' Union induced some of the members of the Tailoresses' Union to leave the latter and join the former, and then applied for registration under the new name. The Registrar's attention was directed to clause 11 of the Act, but, as already stated, the new Union was registered, and, according to a report published in the "Otago Daily Times," the original Union was not notified of the application made by the new Union, as required by the Act. Subsequently, the Deputy-Registrar wrote that he had endeavoured to get the new Union to cancel its registration, but that it had refused to do so, and that he did not "feel justified in taking so arbitrary a step as to cancel it" himself. It seems that the Tailoresses' Union had been working under an award of the Court for about five years, and had shown no inclination to apply for new conditions. Evidently, therefore, the object in getting some of the tailoresses into the Tailors' Union was to enable the former to get a change in conditions, as the new Union, after registration, applied for such. The Tailoresses' Union strongly opposed the application of the new Union, as it believed that the interests of the tailoresses would be better served by having no connection with the men's union. The Court, however, recognised the new Union, and gave an award without making any material alteration in the conditions previously in force.

If an industrial union fails to send to the Registrar in January its list of members and officers, the Registrar, under section 21 of the Act, is empowered after being satisfied that the union is defunct, to cancel the registration of such union. As soon as cancellation of registration of a workers' union is effected, any award binding the parties which has expired becomes

inoperative. A union, however, may be defunct for a considerable time, and if the Registrar declines to cancel its registration, the award by which the parties have been bound continues to operate, whether it has nominally expired or not. It seems evident that the Legislature having provided a means for cancelling defunct unions, never intended that such a provision should be disregarded. About two years ago, however, Mr. Tregear considered it right to decline to cancel the registration of the Dunedin Sailmakers' Union, which, for *nearly two years*, had ceased to exist. Certain facts arising out of the action of the Registrar are here given, as they serve to show some of the complexities connected with the working of the Arbitration Act. The Sailmakers' Union obtained an award of the Court in 1901. This award expired on the 21st September, 1903, but before that date the Union had practically become defunct. In 1905 one of the employers who had been a party to the award was charged with committing several breaches. His defence was that as the award had expired and as the Union had no existence in fact, although its registration had not been cancelled, the award was inoperative. In delivering judgment in the case, the President of the Arbitration Court said:—

> Though still, in name at least, a union, it had undoubtedly acquired the status recognised in the Amending Act of 1901 as "defunct" (section 20). It had no officers, could perform none of its functions, could not really be held liable for anything, and could not sue for anything due to it. . . . The Registrar has not taken the steps required by section 20 of the Amending Act of 1901 to ascertain whether the union has ceased to exist; indeed, we understand that he has refused to do so. Had he had the facts as fully before him as they were in evidence before this Court he might have taken a different course. The inconvenience of finding the union in this condition is shown by the fact that when a workman wanted to obtain a permit to work for an under-rate wage he could find no secretary to assist him. . . . The conclusion at which the Court arrived . . . . . was that from no point of view ought penalties to be inflicted on those who had disregarded the award when there appeared to be no one capable of performing the duties of the union.

Citing the contention of counsel for the Inspector of Awards that whatever might be the condition of the Sailmakers' Union its corporate existence had not been terminated by cancellation of registration, the President said:—

> If that be so, then we have the manifestly inequitable result that while the union is unable to perform its functions, and cannot be compelled to obey the award, the employer and employees may be so compelled by the Registrar or Inspector, and cannot get rid of these obligations, as the award, though its period has expired, not only remains in force, but cannot be terminated for want of a union capable of being cited in a proceeding to form another or rescind this one.

After stating that the Court held that the award in question remained in force, the President in concluding remarked:—

> The position is, however, in many respects unsatisfactory. We do not think that the Legislature can have deliberately intended that parties should be bound by an award the period of which had expired, which had, perhaps, become unsuitable, but which they were unable to get rid of because they cannot cite the union. There being no process enabling an aggrieved party to challenge the existence of a union said to be defunct, the remedy for this is exclusively in the hands of the Registrar. This may be a hardship, but there is no ground for supposing that when the facts are fully before him he will fail to investigate them and do justice accordingly. . . . . The course we take is simply to record a breach in each case and inflict no penalty.

Some months after this case was disposed of, the Registrar cancelled the registration of the Union. It is regrettable, however, that he did not take that step at the proper time. As we have seen, he refused to take steps required by the Act to ascertain whether the Union had ceased to exist, with the results as given in the above extracts from the judgment of the Court. It would appear that as the law at present stands, no Court can interfere with the Registrar in whatever course he may choose to take in a case of this kind. The law ought to be amended so as to make it obligatory on the part of the Registrar to carry out what the Legislature intended should be done.

It may be as well to remark here that not quite so much notice would have been taken in this work of the policy of Mr. Tregear had it not been for the fact that, as Secretary of Labour, he holds a most responsible position. And as he appears to have treated with indifference, if not with contempt, the protests made against his somewhat aggressive partisanship, he cannot complain when attention is directed to his policy, and criticism is passed upon it. Mr. Tregear may yet see his way to regard his position as one which demands from him the strictest impartiality. The employers insist on him taking this view of his office, and their demand cannot be said to be an unreasonable one.

The Inspectors of Awards, who are under the control of the Labour Department have, to some extent, the smooth working of the Arbitration Act in their hands. If an employer has departed from the letter of the award under which he is working, the Inspector can help him out of his difficulty, or he can deal with him in a strictly legal manner and bring him before the Court. The Inspector fills a position which cannot be always an enviable one. If he shows a tendency to deal leniently with the defaulting employer, he is likely to give offence to the unions,

while he incurs the displeasure of the employer if he deals sharply with him. There are some Inspectors who, on the whole, act very fairly in their dealings with employers; there are others of whom this could not always be said. The latter seem to consider it their duty to specially look after the interests of the workers. In some instances they give the employer a chance to rectify his mistakes without bringing him to Court, but in many others no consideration is shown to the employer, even though his offence may be no worse than that of the one who is allowed to go unpunished. But, perhaps the worst kind of complaint which has been made against certain Inspectors is that they have spoken in highly objectionable terms to the parents of young people concerning the employer of such. One instance will serve as an example. An employer was charged with failing to pay to some young women the rate of wages fixed by the award. It was open to the employer either to apprentice the hands, or to employ them without apprenticeship. If not apprenticed, they were entitled to a higher wage than that fixed for apprentices. The employer elected to treat the girls as apprentices, pay them the apprentice rates, but failed to have them indentured, as required by the award. It was held by the Court that as the employer had not indentured the young women he ought to have paid them the higher rates of pay. He was accordingly fined, and ordered to pay arrears of wages. After the arrears had been paid, the Inspector who had instituted the proceedings called upon the parents of the young women to ascertain whether the order of the Court had been carried out. One of the parents happened to remark to the Inspector that she held the employer of her daughter in high esteem. This seemed to greatly displease the Inspector, as, on leaving, he said something to the following effect:—"You think a lot of Mr. ———, do you?—A man who tried to rob your daughter of ——— pounds!"

It is well-known that not a few of the men appointed as Inspectors were formerly noted unionists, whose opinions of the average employer was by no means flattering. Generally speaking, these Inspectors have given employers a great deal of trouble. It is only fair, however, to acknowledge that, with perhaps a few exceptions, they have subsequently become less aggressive (doubtless after a proper realisation of their responsibilities) and have given little cause for complaint. It is highly important that each Inspector, as well as the head of the Labour Department, should be a person of strict impartiality,

and there would be a better chance of this class of officer always being secured if a change in the method of appointment were made.

About a year ago the Hon. J. A. Millar was appointed to succeed the late Mr. Seddon as Minister for Labour. Having been for many years identified with labour affairs—first outside, and afterwards inside Parliament—and having the reputation of being one who generally took a broadminded view of things, his appointment was regarded as an eminently suitable one. So far, the employers have expressed satisfaction with Mr. Millar's appointment. Naturally, his sympathies are with the workers, but he always treats any representations from the employers in a fair and reasonable manner, and there can be little doubt that this attitude towards the latter will not be overlooked by the officers of the Labour Department. Mr. Millar's views, indeed, would appear to be too broad to suit those of the Trades Councils in the Dominion. Mr. Millar has given great offence to the Labour Party because he has inserted in the new Arbitration Bill provisions intended to encourage the settlement of industrial disputes through the meeting together of representatives of both sides, and to dispense with the professional agitator as much as possible.

CHAPTER XVII.

CONCLUSION.

While this chapter has been reserved partly for the summing up of the situation brought about by the Conciliation and Arbitration Act of New Zealand, the reader will probably find the information contained in the previous chapters sufficiently comprehensive to enable him to form a tolerably accurate opinion respecting the merits or demerits of the Act. But it seems to me that there are a few points which can be best dealt with in a chapter such as this, and I am hopeful that what I may say may be of some value to the reader—especially to the reader outside New Zealand.

With regard to the question whether the Act has been a success or whether it has even justified its existence, I should like first of all to say that the person who visits New Zealand for the purpose of making inquiries on the matter industriously gathers individual opinions from various sources. This is, perhaps, the best thing that one who pays a very brief visit to our shores can do, but it cannot be regarded as either satisfactory to himself or to those who peruse the results of his investigations. In 1902 employers in the four chief cities were asked by circular their opinions respecting the Arbitration Act. The majority of the replies were decidedly unfavourable to the Act, but it ought to be pointed out that the information given was necessarily exceedingly brief, and can hardly be regarded as of much practical value. Besides, I believe I am right in saying that a number of employers specially qualified for giving opinions on the working of the Act did not happen to reply to the questions put to them. An opinion from every employer in New Zealand is hardly possible, but having had a lengthy experience among employers engaged in various businesses, I am able to sum up their attitude thus: Some, for business or other reasons, decline to express an opinion on the Act; some speak in favour of the principle of the Act, but say that the Act has been diverted from its original purpose; others (and these, I think, form a large proportion of the employers in the Colony) have little or nothing to say in favour of the Act, and express the opinion that it would have been better for the industries of the Colony if it had never existed.

With reference to those employers who believe in the "principle" of the Act, some explanation is necessary. Mr. Outtrim, a member of the Victorian Commission (which visited New Zealand in 1902 for the purpose of enquiring into the Arbitration Act) had stated that "there was a unanimous opinion that the principle of the Conciliation and Arbitration Act is a sound one, and that they (both employers and workmen) would be very sorry to go back to the old order of things," and that the Presidents of Chambers of Commerce, Employers' Associations, etc., "all say that it is a most beneficial law." The attention of Mr. G. T. Booth, then President of the Canterbury Employers' Association, was called to this statement, and the following is an extract from that gentleman's reply:—

I am bound to say that I am at a loss to know how any unprejudiced person inquiring closely into the facts and the opinions of employers generally could have arrived at such a conclusion. It is obvious that in an enquiry such as that recently conducted by the Victorian Commission in New Zealand it is of the utmost importance that examiner and witness should clearly understand each other, and that question and answer should be so simple and direct as to leave no ground for misconception. Questions or answers couched in general and unprecise terms inevitably take colour from the personal predilections of the several parties, and the final report in such case is just as likely as not to be wide of the truth. Mr. Outtrim's statement as to the opinion of employers regarding the "principle" of our Conciliation and Arbitration Act is a case in point. In several cases, at the sitting of the Commission in this city (Christchurch), this was the form of question: "Are you in favour of the principle of the Act?" Now, what is the principle of the Act? Is it the substitution of arbitration for strikes, the application of means tending to a peaceful settlement of disputes in place of the panoply of industrial war? If so, there is no sane man who would not answer the question in the affirmative, as was done almost unanimously. Hence arises misconception number one. For, admitting that this is the leading idea supposed to be embodied in the Act, it is not the only idea. It would be equally within the truth to describe the Act in question as an embodiment of the principle that the workman should be entitled to interfere with the management of his employer's business in nearly every important detail. A perusal of the interpretation clauses dealing with "industrial matters" will make this clear. And if the question were asked: "Do you prefer arbitration to strikes?" the answer would undoubtedly be in the affirmative. But if it were followed by another: "Do you approve of the workman's assumed right to interfere with management?" employers would be equally unanimous in the negative. Mr. Outtrim's generalisation, therefore, errs in expressing only half a truth, which, in this case, is in danger of being worse than a lie.

This, I think, aptly explains what any New Zealand employer means when he says that he believes in the "principle" of the Act.

Some hard things have been said by employers concerning the Act, but the most scathing and crushing denunciations to which it has been subjected have come, not from employers, but

from workers' unions. Some of these denunciations are given in the chapter on "Dissatisfaction with the Court and its Awards," and need not be further dealt with. The Report adopted by the Trades Councils' Conference, held in April, 1907, may however be referred to here. The delegates which attend the annual conference of Trades Councils are supposed to represent the opinions of practically the whole of the workers' unions in the Colony, and the Report referred to was, it is understood, unanimously adopted. The Report remarks, at the outset, that "if this Act is to remain in operation, it is absolutely necessary that the workers should be represented in Parliament by direct Labour representatives, *who will see that the Act is* administered justly and suitably." The Report proceeds:—

> . . . . . The Act, we find, has never been properly framed to protect the unionists and encourage the formation of unions. The voluntary principle has been more or less abused, and the compulsory and rigid features of legal procedure more and more exacted until the dangerous element of writs of attachment is required to compel adhesion to the law.

It will be observed that the writs of attachment, in case of non-payment of fines for striking, do not find favour with the Labour leaders.

After deploring the fact that the number of registered unionists had dropped from 30,000 in 1905 to 29,000 in 1906, the Report says:—

> That whereas it is most difficult to say whether any increased remuneration received by the wage-earning class, or the improved condition of employment is due to the very active state of trade and general conditions of prosperity prevailing, we are confident that of the enormous increase of wealth produced, the workers have received an entirely inadequate proportion; and in the case of the unions of workers which have received awards of the Arbitration Court during the past seven years we find that these unions have every time been refused any advances. . . . The workers in general must recognise that whilst their proportion of the profits of industry is fixed by the operations of the Act and scarcely ever rises above the rates fixed as the minimum rates of pay, which is in general actually the maximum rate, the Act makes no provision on the lines of limiting the proportion of profits which shall go to the employers; therefore, the Act is no preventive against the continuous accumulation of wealth in a few hands, which is the cause of the economic evils that are crushing the workers in our colony the same as those in other lands. **The Arbitration Act is not even a partial solution.**

This, then, is the conclusion at which the representatives of the workers have arrived after an experience of the Act extending over ten years. And if we put alongside this conclusion the opinion of the majority of the employers respecting the Act, we must assume that that statute has not been the success which

its author hoped it would be, or which some of its friends declare it is. It would be utterly unreasonable to say that any Act which has caused great dissatisfaction among the people brought under its operation, has been a success in the true sense of the word. It may be remarked, too, that the reasons given by the workers for their dissatisfaction with the Act are different from those advanced by the employers. This, I think emphasises the opinion that the Act has not been a success. The Act has not even given satisfaction to one of the parties. In the early history of the Act, as has been frequently pointed out, the workers were satisfied so long as the Court gave them some concession, but when the Court refused to continue to advance wages, on the ground that the industries could not bear any further burden, the greatest dissatisfaction was expressed. But even supposing the Court had succeeded in pleasing the workers by giving some little concession every time an application for a new award was made, what effect would this have had upon the employers? It is almost certain that the latter would have uttered strong protests against such a policy, and it is impossible to say to what extent businesses would have been crippled, or perhaps wiped out by this policy. For it will be apparent to anyone who gives the matter a moment's thought, that there must be a limit to the granting of any increase in wages. Besides, as we have shown in a previous chapter, the demands of the workers often largely exceed the profits made by the employers, and it will thus be seen how easily it would be for the Court, if it felt disposed to give way to such demands, to compel industries to close down.

These facts, therefore, demonstrate in the clearest manner possible that compulsory industrial arbitration cannot (in the majority of instances, at any rate) please both employer and worker. Either the one party or the other will feel aggrieved at the awards of the Court.

But though opinions of the Arbitration Act, such as those I have referred to, must carry some weight, a close student of the Act will not be satisfied with opinions merely; he will look for and attach the greatest importance to hard facts, so far as they are available. Now I venture to think that no one who carefully studies many of the facts given in this book will be disposed to give the Act greater credit than this: that its success has been very limited. In connection with this point it may be remarked that the present Minister of Labour regards the Act as largely a failure. Should anyone have any doubt about this,

he has only to glance through the new Arbitration Bill the Minister has introduced, and refer to some of the latter's statements made since its introduction. In reply to a deputation from the Wellington Trades' Council, the Minister among other things said:—

> Now, what has caused the Conciliation and Arbitration Act to be to a certain extent a failure? From one end of the Colony to the other there has been a demand for something to be done to simplify the procedure and prevent the delays. . . . I say that 90 per cent. of the Unions recognise that the Conciliation Boards have been a failure as at present constituted. I maintain that true conciliation can be secured only by representatives of the men directly interested meeting one another and discussing the position across a table.

The Minister was emphatic in his declaration that the Government would "not agree with the retention of the existing Conciliation Boards." These Boards, which Mr. Reeves hoped would prove so valuable that they would be able to settle 99 cases out of every 100 that arose, are thus to be wiped out of existence at the instance of the Government.

No one who comes into close touch with the working of the New Zealand Arbitration system can fail to perceive its defects. From the employers' point of view, one of the chief defects of the Act is that it provides machinery which can be used for the *creation* of disputes. The intention of the Legislature was, I believe, that the Act should be used only for the settlement of *bona fide* disputes, so as to prevent strikes. Nearly all the so-called disputes, however, which have arisen since the Act came into operation would never have been heard of but for the readiness of the workers' unions in taking advantage of the means provided for creating them. According to the opinion given by Mr. Justice Cooper, in the Otago Coal Miners' case, the term "dispute" in the Act has a very different meaning from that ordinarily given. All that is required in order that a dispute may be established is that there should be "a *difference* concerning the conditions of employment between a trade union . . . and the employers in a particular industry." In other words, if a workers' union forwards to the employers a statement of wages and general conditions of labour, and if the statement is either ignored or not complied with, a dispute is created within the meaning of the Act. This is objectionable enough, but what is still more objectionable is that the Act (section 105) makes it clear that it is not necessary that the members of a union bringing a dispute should be employed by the employers affected by the dispute; that is to say, a union may create a dispute (in which the members may not be in the

least personally concerned) without the consent of the general body of workers. With these facilities for creating a "difference" between the employers and workers it will not surprise anyone to learn that, according to a Parliamentary return, just issued, the number of awards, agreements, etc., made under the Act from its inception up to the 31st May, 1907, was 546. The number of trades affected by these was 78, which gives exactly an average of seven awards, etc., to each trade. The Minister of Labour recently said:—"The whole principle of the Act is to bring about conciliation between employers and employees without the intervention of any party that is not directly interested in the result of the conference." The Minister was talking about the new Arbitration Bill at the time he uttered these words, and he also remarked, when referring to the Conciliation Boards, that the "professional men," that is, I presume, those responsible for the creation of disputes, were "causing all the trouble." The Minister appears to think that a great deal, if not all, of the trouble caused by agitators would be effectually checked by the provision in the new Bill which prevents any person becoming an officer of a union unless he is employed in the industry "in respect of which such union was established." It seems to me, however, that this provision would only mitigate the trouble caused to employers by the too frequent filing of disputes. Even supposing an agitator was prohibited by law from becoming an officer of a union, there would be nothing to prevent the union employing him to carry on the work of agitator just as vigorously as though he filled some particular office in connection with the union. What the agitator could not do would be to appear in any dispute before an industrial council. He could, however, appear before the Arbitration Court. But the new Bill does not propose to interfere with the easy means at present provided for creating a dispute, and sub-section 1 of section 105 of the Act, just alluded to, is to remain law.

What appears to me to be another serious defect in the Act is that it can bring under its operation persons employed in nearly every occupation. This will be seen from the definition of "worker" in clause 1. There is nothing to prevent a number of Anglican curates forming themselves into an "industrial union of workers" for the purpose of citing their employers before the Arbitration Court. There is no reason to suppose that the Court would refuse to make an award fixing the minimum remuneration which should be paid to such gentlemen. In

Christchurch there is a journalists' industrial union of workers, and in one or two cities a domestic workers' union has been formed. The journalists have not, so far, formulated any demands, but the domestic workers have been moving in that direction for some time. Thus the machinery of the Act seems likely to be set in motion for the purpose of determining the wages, hours of work, holidays, overtime, etc., which shall apply to those persons who are members of a private household.

Some months ago a shipmasters' union, which was formed asked the Court to make an award. The Court refused the request on the ground that a shipmaster was not a "worker" within the meaning of the Act. It has been suggested that section 40 of the new Bill has been inserted for the purpose of enabling the shipmasters to come within the scope of the Act. That section eliminates the words "to do any skilled or unskilled manual or clerical work" from the definition of worker, the clause reading simply thus: "'worker' means any person of any age of either sex employed by any employer." This is a wide departure from the Act of 1894. That Act contained no definition of worker, but it defined industry as "any business, trade, manufacture, undertaking, calling, or employment *of an industrial character.*" Clearly it was never intended by the promoters of the original measure that industrial arbitration should be applied to persons not engaged in industrial pursuits. In 1900 the legislature altered the Act so that people in most callings might be brought under it, and now it is proposed to make a still further amendment so as to ensure that no one may be left outside of its operation.

Related to this question is the action of the Legislature in inserting in the Amendment Act of 1904 a clause declaring that "an employer shall be deemed to be engaged in an industry, when he employs workers who by reason of being so employed are themselves engaged in that industry, whether he employs them in the course of his trade or business or not." The chief object of this clause was to compel employers who carried on various large industries and who frequently employed a number of carpenters, painters, or other tradesmen, to be placed on the same footing as the ordinary employers of such workers, so far as the payment of the minimum wage was concerned. The clause was also intended to apply to any private citizen who wished, for example, to build a house, and engaged tradesmen of his own choosing to do the work, instead of placing it in the hands of a builder. But the clause, it appears, may be

applied to any person who employs a tradesman to do any small job, such as erecting a wooden fence or a small shed.

It would be of great value to the student of compulsory arbitration in New Zealand if full information regarding the effects of the operation of the Arbitration Act upon employers, workers, and trade, *could* be ascertained. It seems hardly possible to obtain this, but there is sufficient information already available to show many of the results of the working of the Act. Some of these results may be briefly referred to.

It is well-known that the fixing of a minimum wage in most trades has produced very unsatisfactory results. It should be pointed out first of all that, generally speaking, the rise in wages granted has been artificial instead of natural. The employer has, therefore, where it has been possible to do so, passed on the extra cost to the consumer. The consumer, in most cases, has been the worker himself, and as this process has developed, the latter has benefited but little from his increase. A large section of the community—that which is composed of persons with fixed incomes—have, of course, had to suffer from any increase in the price of articles. In some trades employers have not been able to cope with the extra cost of production owing to competition with the imported article. They have, therefore, had to give up the producing part of their business and increase their importations. In the tanning and fellmongering businesses, some serious results have followed the fixing of a minimum wage. I will mention two instances. Some years ago a firm in the district of Dunedin closed down its works and removed its plant to Australia, largely owing to the conditions imposed by the Arbitration Court. A member of a Christchurch firm has informed me that since the Court's award in the Canterbury district was made about six years ago, a much larger proportion of sheepskins have been shipped to London, without being handled by the local fellmonger, than was formerly the case. Hides which should have been tanned here have been shipped raw. Prior to the award, my informant's firm paid from £10,000 to £15,000 in wages; now, the wages sheet amounts to only about £5000. The number of bales of wool scoured annually by the same firm since the award came into force has not been more than 2000; formerly the number was from 6000 to 8000. This kind of industry, it appears, is a speculative one, being largely controlled by the London markets. The view the employers therefore take is, that they should not be bound by any fixed rate of wages, as, owing to the fluctuations

in the markets, they might at any time incur serious loss. The firm I have referred to have a plant valued at about £11,000 of which they will make very little use so long as they have not a free hand in regard to labour conditions. The number of workers has, in consequence of the award, been thus largely reduced, and a considerable amount of money annually has gone outside the Dominion.

Although many employers are able to obtain a reasonable profit, no matter what wage is fixed by the Court, they would prefer that the wage should be regulated according to the condition of the trade. They would be better able to do justice to the efficient workman.

There are several ill effects which the minimum wage has upon the worker, but it will suffice here to refer to the principal one. As pointed out in chapter seven, the minimum is, in the majority of cases, fixed too high, with the result that the employer often makes no distinction among the various classes of workmen as regards the rate of pay. This tends to reduce efficiency, and takes away from the capable man any ambition he may possess.

The limitation of apprentices, interpretations of awards, breaches of awards, preference, and under-rate workmen, are questions which have already been dealt with so fully that it is not necessary to make further reference to them.

It is a matter for regret that the relations between the employers and workers have been less cordial than they were previous to the coming into operation of the Act. Indeed, in the majority of cases, both sides occupy hostile camps. The one party is ever suspicious of the other, and each fights for his pound of flesh. The trivial cases of breaches of award brought by unions against employers show to what extent the former will go when invested with a little power. Some employers are often harassed by what may be called "vexatious litigation." General Babington, the late Commander of the New Zealand Forces, must have had the Arbitration Act in his mind when he made the following remarks in his report presented to Parliament in 1906:—"Recruiting . . . is becoming a very much more difficult matter, and *the less cordial relations which apparently now exist between employer and employee* is, compared to a few years ago, a serious menace."

I have ventured the opinion that the Act has been only a partial success. Very few, I think, will give it greater credit than this. For many good reasons, however, it is a pity that

the system has not been more successful. Had it done all that was expected of it, the civilised world would have had to acknowledge that New Zealand had solved one of the most difficult problems which had engrossed the attention of able minds.

But whatever success the Act may have met with, it must be borne in mind that during the past twelve years the Act has been working under exceptionally favourable conditions. During that period the Colony has experienced a great wave of prosperity, due chiefly to the high prices obtained for the products of the soil. Money has been plentiful, and this, together with the general prosperity, has enabled many employers to meet the conditions imposed by the awards of the Arbitration Court. The industries of the Colony have expanded (although only to a limited extent), but this has taken place not because of the Arbitration Act, but in spite of it. As Dr. Clark, of the Labour Bureau, Washington (U.S.A.), has remarked:—"There is no more occasion to attribute the expanding commerce and manufacturing of the Colony to Labour Legislation than there is to ascribe the rise and fall of the tides on our Atlantic coast to the River and Harbour Bill." If, since the Act came into force hard times had prevailed, it is not at all likely that the Arbitration Court would have been made much use of by the workers. The Court would not have ventured to give any increase in wages, and as dull times mean plenty of men out of work, those in employment would have had the good sense to leave well alone. The remark has often been made (and the truth of it must be obvious to anyone who has given any consideration to the subject) that the true test of the worth of the Act will be when a period of depression in the Colony sets in. Under a depression of trade the employers would most probably find it necessary to ask the Court for a reduction in the wages fixed while trade was good. What, one may ask, would be the attitude of the workers' unions in the event of a reduction, however small, being granted? The unions, as we may have seen, have denounced the Arbitration Court because it has, in many cases, declined to give any further increase in wages. One can well imagine, therefore, what these bodies will say should a reduction ever be made.

Everyone recognises that the Act has stopped sweating. A uniform minimum wage being fixed in each trade, every employer is compelled to pay it. But it should be remembered that this

stopping of sweating is not an unmixed blessing, because the minimum wage, in numerous cases, puts the efficient worker on the same level as the less capable man. This must have a bad moral effect on the expert workman, and to some extent discounts the benefit resulting from the abolition of whatever sweating may have previously existed in New Zealand.

It is claimed by some that the Act has conferred a great benefit on the country by preventing strikes. It is true that up till the end of 1906 no strikes in trades bound by awards had occurred, but we have absolutely no grounds for supposing that any of these trades would have been involved in strife had there been no Arbitration Act in existence, the awards or agreements made being the result of purely factitious disputes. But *can* the Act prevent strikes? It is not necessary to refer to the case of the slaughtermen for the purpose of showing that even when bound by an award, and by a special provision in the Act which provides penalties for striking, the workers will strike, if they think they can best attain their ends by adopting such a course.

It is commonly remarked among business people that industrial enterprise in New Zealand has been checked to a considerable extent, in consequence of the labour laws of the country. It is an undoubted fact that many people having money to invest have been careful to avoid any concern in which labour is the chief item of expenditure. They have felt, that so long as the industries are, so to speak, under state regulation, and therefore subject to periodic changes as regards wages, hours, and other conditions, their capital would be more profitably employed in some other channel. It may be remarked, too, that hardly any new industry has been started for some years, and this notwithstanding that the condition of the Colony has been eminently favourable for industrial enterprise.

Returns obtained from the Government Year Book show that, during recent years, the increase in the importations in our more important industries, such as wool, boots, etc., have increased out of all proportion to the increase of the population. The following figures will show that while from 1883 to 1894 the population increased by about 20 per cent., there was a remarkable decrease in the importation of clothing, and that from 1894 (the year when compulsory Arbitration was introduced) to 1903, the importations never failed to increase:—

Year.	Population.	Value of Clothing at Manufacturers' Cost.	Decreased Imports.	Increased Imports.
		£.	£.	£.
1883 ..	560,000	2,013,565	——	——
1893 ..	672,265	1,809,046	204,519	——
1894 ..	696,128	1,559,966	249,080	——
1895 ..	698,706	1,622,648	——	62,682
1896 ..	714,162	1,890,293	——	267,645
1897 ..	729,056	1,928,896	——	38,603
1898 ..	743,463	1,935,009	——	6,113
1899 ..	756,505	2,123,135	——	188,126
1900 ..	768,278	2,420,241	——	297,106
1901 ..	787,657	2,474,978	——	54,737
1902 ..	807,929	2,604,604	——	129,626
1903 ..	832,505	2,988,118	——	333,514

In giving these figures in an article contributed to the "Lyttelton Times," in 1905, Mr. J. A. Frostick, Christchurch, remarked:—"Briefly stated, whereas the population has increased 21 per cent. in ten years, the imported clothing bill has increased 88 per cent. . . or, in other words, we have sent out of the Colony during this period twenty-one and a-half million sterling for imported clothing alone."

Mr. Frostick further said:—

No one questions the intentions of the original framers of the labour laws, but they were conceived by men with no practical knowledge of the subject—they were considered and passed by a Parliament where manufacturing experience was entirely unrepresented.

Mr. Frostick continued:—

The policy of Parliament has been one-sided, and its vanity has been fed by laudatory articles by foreign writers, when referring to the wonderful legislation of New Zealand in respect to labour; but their Governments carefully avoid copying our example, knowing full well that continuance of the present policy will tend to make New Zealand a more valuable customer.

The wisdom of any country's attempting to solve the labour problem by compulsory arbitration, such as is in force in New Zealand, may be seriously doubted. It should not be forgotten by those who make investigations into the working of our Arbitration Act that New Zealand is a small country with comparatively few industries, and that there is therefore less chance of disastrous results following the operation of compulsory arbitration here than there would be in larger countries where the labour conditions are much more complicated. It has often been suggested by employers that the awards of the Arbitration Court should fix only wages and hours. But even if this proposal were adopted, the employers would still have to contend with that serious defect in the Act, namely, the easy means provided for creating a dispute. In making demands for

extra wages or fewer hours, the unions do not pretend that, in doing so, they have considered the probable effect upon the industries in the event of such demands being granted. The leaders of many of the unions are out-and-out socialists, whose stake in the Dominion is nil, and whose watchword seems to be that of "grab."

It is impossible to conceive what would be the condition of things in a country like Great Britain if the industries there were continually being disturbed by trade unions, some of whose officers would, most probably, be men of the type I have just mentioned.

In New Zealand there seems to be no prospect of finality as regards labour legislation. There have been numerous amendments made to the Arbitration Act since it came into force, but the dissatisfaction with the results of the system becomes greater every year. In 1892, the Hon. Mr. Reeves said, in the House of Representatives, that the problem of settling disputes "had engaged the attention of some of the acutest men and the most experienced minds of many nations, and no final solution of it had yet been come to." It is to be feared that, despite the many experiments made by way of legislation, a satisfactory solution of this great question has not yet been found. It would appear, too, that legislation can give only small help in this matter. It seems to me that before the labour problem can be properly solved, harmonious relations must exist between employers and employed. If legislation cannot bring about this, we must look to the individuals themselves to do it. It has been recognised by our ablest thinkers that the chief function of Government is to make laws for the protection of "life, liberty and property," and that it is most unwise to attempt to make the State do for the individual what the individual can do for himself. In his "Self-Help," Samuel Smiles says that "whatever is done for men or classes, to a certain extent takes away the stimulus and necessity for themselves; and where men are subjected to over-guidance and over-government, the inevitable tendency is to render them comparatively helpless." We have in New Zealand seen what continual tinkering at legislation has produced, and those of our public men who are deeply interested in the material well-being of the people might now consider whether some means outside legislation should not be tried to bring about peace and contentment among the workers of our land.

APPENDIX.

INDUSTRIAL CONCILIATION AND ARBITRATION AMENDMENT BILL (1907).

The above Bill was introduced into Parliament by the Minister for Labour in August, 1907. It was intended that the Bill should be passed into law during the session of that year, but probably owing to the hostility shown to its main provisions by the trade unions, and to the fact that the time of Parliament had been chiefly occupied with other important business, the Government, at the close of the session, withdrew the measure. The changes proposed by the Bill being of more than ordinary importance a summary of these are here given. The alterations made by the Labour Bills Committee of the Lower House are also indicated.

ABOLITION OF CONCILIATION BOARDS.—Clause 3 provides that the referring of an industrial dispute to any Conciliation Board is to cease, but that any dispute pending is to be dealt with in the usual way. Clause 4 directs that no dispute is to be referred in the first instance to the Court.

INDUSTRIAL COUNCILS.—What are termed "industrial councils" are to take the place of Conciliation Boards. Subsection 2 of section 5 states that "any party to an industrial dispute may make application in the prescribed manner" for the "establishment of an industrial Council for the settlement of that dispute."

(The Bills Committee has substituted for the words "any party" the words "any industrial Union or Industrial Association." In this case only bodies registered under the Act could file a reference.)

It is provided that the Council shall consist of seven members, six of whom are to be appointed by the Governor on the recommendation of the industrial unions of employers and workers respectively. These members must be engaged in the industry in which the dispute has arisen, except that "under special circumstances, and with the approval of the Minister of Labour, persons who are not and have not been workers engaged in the said industry may be so recommended and appointed." The other member is to act as President of the Council, and he is to be elected by a majority of the members. If the members fail to elect anyone, the Government may make the appointment.

The election of the President and Council is to be notified in the *Gazette*.

If any member dies or resigns "the Governor may appoint some other qualified person in his place."

A Council shall have power to make an award in settlement of any dispute within one month after the Council is established, "or within such extended time as in special circumstances the Council thinks fit."

(A new clause reads: "Every award made by an Industrial Council shall come into operation on a day to be stated in such award, not being earlier than twenty-eight days after the day of the making thereof.")

Immediately on making an award the Council is to be dissolved.

(The Bills Committee adds, after the word "dissolved":—"But the President of such Council shall continue to hold office during the currency of the award and may, if so desired by the parties to the award, give any interpretation of such award or, with the consent of the Minister, summon the Industrial Council."

The presence of the President and at least four other members of a Council is to constitute a quorum.

(A new sub-clause, inserted by the Bills Committee, directs that if any member of the Council "fails without reasonable cause to attend the meeting of the Council at which the decision of the Council is intended to be given, he may be removed by the Governor, and the Governor may appoint some qualified person in his place.)

Sub-section 2 of clause 10 reads:—"The decisions of a majority of the members present at a sitting of the Council, or if the members present are equally divided in opinion, then the decision of the President, shall be the decision of the Council."

The parties to any proceedings before a Council are to be "industrial unions, industrial associations, or employers," and the Council is to have the same powers with regard to "citation, joinder, or striking out of parties, as are now possessed by the Court."

The provisions of the principal Act and its amendments with respect to procedure before the Court are to apply to the procedure before a Council, and a Council or the President, in respect of any industrial dispute referred to the Council, is to have the same powers and duties that are possessed by the Court or the Judge thereof respectively "in respect of an industrial dispute referred to the Court."

An award made by a Council is to "have the same operation and effect as an award made by the Court" under the principal Act, and all provisions of the latter Act now in force "which relate to the Court or to the Judge thereof, or to the members thereof, or to the awards thereof, are to relate also to an

Industrial Council, or to its President, or members, or awards respectively."

Clause 16 reads:—"Every reference in any Act now in force to the awards of the Court shall be deemed to apply also to awards made by an Industrial Council."

A Council, in respect of any matter of law, may state a case for the advice and opinion of the Court, but no party to proceedings pending before a Council is to have the right to have a case so stated.

Any industrial union, industrial association, or employer bound or intended to be bound by an award made by a Council may, within one month after the making of the award, apply to the Court for leave to appeal to the Court. The Court may, if it thinks fit, grant leave to appeal, or it may refuse such leave. "The appeal may be either on the law or on the facts, and if on the facts it shall be by way of a rehearing."

(The time within which the appeal is to be made has been altered to 28 days, and a majority of the employers, instead of a single employer, can move for leave to appeal to the Court.)

Sub-sections 7 and 8 of section 18 provide that "the decision of the Court on any appeal shall be final," and that "the pendency of the appeal shall not suspend the operation of the award appealed from."

(The following has been added to the latter provision:—"But the Court shall direct that its award, or the award appealed against, or any part of such award shall have effect as from the date of the award appealed against.")

INDUSTRIAL AGREEMENTS.—It is proposed by clause 21 that industrial agreements, at present binding only on those who choose to become parties to them, may be extended by the Court to all the employers engaged in the same industry and in the same district, if it is proved that the employers originally bound by the agreements employ a majority of the workers.

ENFORCEMENT OF AWARDS.—Clauses 22 to 39 relate to the hearing of breaches of awards by a magistrate. The magistrate is empowered to state a case for the opinion of the Arbitration Court. He may, in his discretion, make any fine "payable either to the Crown, or to the person on whose application the fine was imposed, or to any other person."

(This latter provision has been struck out, and the following substituted:—"All moneys so made payable to any party or person shall be received by him to the use of the Crown, and shall be paid by him into the Public Account and shall form part of the Consolidated Fund.")

No fine is to exceed £100 for any one breach "in the case of an industrial union, industrial association, or employer, or £10 in the case of a worker."

(The fine the worker is liable to pay has been reduced to £5.)

An appeal against any order of a magistrate imposing a fine may be made to the Court of Arbitration, and the Court "may either affirm the order appealed against, or reverse the said order, or reduce the fine imposed thereby."

In the event of a union being fined, and the amount imposed not being paid within one month, the members of the union are to be jointly and severally liable" for the fine, save that no person shall be liable for a larger sum than £10.

(The liability of the members of the Union has been reduced to £5.)

Clause 30 provides that in the case of a worker failing to pay any fine imposed, his employer, after receiving notice from the Inspector of Awards, is to deduct a sum equal to 25 per cent. from his wages until the full amount is paid.

(This provision has been amended by striking out the words "equal to," and substituting the words "not exceeding." It is understood that the principal object of the clause is to ensure the recovery of fines imposed on workmen for striking. Great difficulty has been experienced by the Labour Department in collecting the fines imposed on the slaughtermen some time ago.

Clause 33 directs that the foregoing provisions as to the enforcement of awards are to apply to any offence created by section 15 of the Amendment Act of 1905, which provides penalties for striking.)

Sections 101 and 102 of the principal Act are repealed.

No union can make an application for enforcement of award until the proposed application has been approved by a resolution carried at a meeting of the members of the union convened by advertisement.

(The Bills Committee has made an alteration in this clause to the effect that the meeting is to be convened in accordance with the rules of the union, instead of by advertisement.)

DEFINITION OF "WORKER."—Section 2 of the principal Act is amended by striking out the words "to do any skilled or unskilled manual or clerical work." The section thus altered reads:— "'Worker' means any person of any age of either sex employed by any employer."

INDUSTRIAL UNIONS.—A new clause (40a) increases the number of persons necessary to constitute either a union of employers or a union of workers. The principal Act requires two persons in the case of employers and seven persons in the case of workers. It is now proposed to alter these to seven and twenty-five respectively.

INDUSTRIAL ASSOCIATIONS.—Two industrial unions may register as an industrial association, and they need not be of one industry. At present it is necessary that the two unions should be of the same industry.

APPOINTMENT OF MEMBERS OF COURT.—The Bills Committee has amended section 66 of the principal Act, which allows one vote to each union in recommending persons for appointment as members and acting-members of the Arbitration Court. The Amendment requires that every union having not more than 50 members is to have one vote, and every union having more than 50 members is to have one vote for every 50 of its members.

SPECIAL MEETINGS OF UNIONS.—Section 44 provides that, with respect to every special meeting held under section 105 of the principal Act, the time and place of the meeting and the proposal to be submitted thereto is to be advertised three times in some newspaper circulating in the district. The meeting is to be held in accordance with the rules of the union, save that the proposal to be submitted, together with a form of proxy, is to be posted to each member not later than seven days before the day of meeting. The proposal is not to be deemed carried unless passed by a majority "of such of the members present at the meeting either in person or by proxy as are entitled under the rules to vote."

Sub-section "a" of section 105 of the Act is amended by striking out the provision requiring a ballot to be taken of the members for the confirmation of any resolution deciding to file a reference to the Board or Court.

(The provision that the time and place of the meeting is to be advertised three times in some newspaper has been struck out.)

Sub-section 1 of section 106 of the principal Act is repealed.

PAYMENT OF BACK WAGES.—Section 45 provides that no action can be brought by a worker to recover back wages save within three months after the day on which the wages claimed became due.

(The Bills Committee has inserted a new clause empowering the Magistrate to order that "a sum equal to the difference between the wages actually paid and the wages legally payable, shall be paid by the employer to some person named in the order." The clause also contains the following:—

(2) All moneys received by any person pursuant to such order shall be dealt with by him in the manner following, that is to say:

(a) In payment, if the Magistrate so directs, to the worker of a sum equal to the difference aforesaid for the period (not exceeding three months) during which he received such less rate of wages; and

(b) Subject to any such payment in payment into the Public Account.

It is also provided that where any such payment is made to the worker no further action can be taken by him against his employer to recover any arrears of wages.)

CERTIFICATE OF AGE.—Clause 46 directs that "it shall be sufficient proof of the age of any young person desiring employment if such young person produces to the employer a certificate of age granted by an official of the Labour Department."

CONTRIBUTIONS TO UNIONS BY NON-MEMBERS.—On the application of any industrial union of employers or workers "the Court may order that the Secretary of the union may from time to time serve on all or any employers or workers, as the case may be, who are at the time of such order or thereafter become engaged or employed in the industrial district in which the union has its registered office and in the industry in connection with which the union is established, and who are not members of the union, a demand that the employer or worker on whom such demands is served shall thereafter pay to the union in accordance with the rules thereof, so far as applicable, an annual, monthly, or weekly contribution equal in amount to that payable by an ordinary member of the union."

No demand of payment of any contribution can be made from an overseer or foreman having direction over at least five members, an indentured apprentice, or anyone under the age of seventeen years.

(The Minister of Labour has explained that under this provision there will be no preference to unionists. "The men who are called upon to make contributions will have the right to join the union if they like, but it will be optional.")

COPY OF AWARD IN FACTORY OR SHOP.—Clause 48 requires that "there shall be painted, printed, or affixed in legible characters, in some conspicuous place at or near the entrance of each factory, shop, or place to which an award applies" a copy of the award "as to the lowest prices or rates of payment fixed by the award."

(This clause has been struck out, and another, slightly different inserted. The latter provides that "a printed or typewritten copy" of the award is at all times to be kept in the factory or shop.)

LIMIT OF AGE OF APPRENTICES.—Clause 49 reads:—"No person over the age of twenty-one years shall be deemed to be an apprentice within the meaning of any award or industrial agreement, whether made before or after the coming into operation of this Act."

(The limit of age has been raised to 25 years.)

PERMITS TO UNDER-RATE WORKERS.—It is provided by Clause 50 that all applications for permits to work for less than the minimum wage are to be made to the Inspector of Factories.

(A new sub-clause states that the permit is to be valid only for the period for which it is granted, but that it may be renewed on application. Any holder of a permit working contrary to the award after the expiration of the permit will be liable to a fine not exceeding £5.)

TRADE UNIONS.—Clause 51 requires that any union whose central management is outside New Zealand, is to retain in the Dominion, and under its control, at least three-fourths of its

Clause 52 states that no trade union is to be registered under the provisions of the Trade Union Act, 1878.

The Bills Committee adds to this Clause, after "1878" "if there is, in connection with the same industry, an industrial union already registered under the principal Act to which the members of such trade union belong or to which, in the opinion of the Registrar of Trade Unions they may conveniently belong. The decision of the said Registrar shall be final and conclusive."

OFFICERS OF INDUSTRIAL UNIONS.—Clause 53 provides that no person is qualified to be a member of the Committee of Management of any Industrial Union or an officer of any such union, unless he has been "or is actually and *bona fide* engaged or employed in the industry in respect of which such union is established," and that any person who commits a breach of this clause will be liable to a fine not exceeding £10.

(This provision has been strongly opposed by the workers' unions, and the Bills Committee has added the following sub-clause:—

"This section shall not apply to any industrial union the number of whose members as shown by the last list of members forwarded to the Registrar in pursuance of section 17 of the principal Act was less than 75 in number, or to any industrial union so long as a majority of its members are women.")

CONTRACTS OF SERVICE.—A new Clause directs that every award is to prevail over any contract of service or apprenticeship in force on the coming into operation of the award, so far as there is any inconsistency between the award and the contract.

BARRISTER OR SOLICITOR.—No barrister or solicitor is to appear on behalf of any person before an Industrial Council on the hearing of an industrial dispute.

It is fully expected that the Bill will be again brought before Parliament during next session.

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